

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**KARL E LINDERHOLM**  
Claimant

**HY VEE INC**  
Employer

**APPEAL 21A-UI-02122-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/12/20**  
**Claimant: Appellant (4)**

Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment  
Iowa Code § 96.4(3) – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

On December 16, 2020, the claimant, Karl E. Linderholm, filed an appeal from the December 9, 2020 (reference 03) unemployment insurance decision that denied benefits effective August 16, 2020, based upon a determination that claimant was still employed with the employer at the same hours and wages as contemplated in his contract of hire. The parties were properly notified of the hearing. A telephonic hearing was held on Monday, March 1, 2021. The claimant, Karl E. Linderholm, participated. The employer, Hy-Vee, Inc., participated through witness Amy Kramer, Store Manager; and hearing representative Barbara Buss represented the employer. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Is claimant Karl E. Linderholm totally, partially, or temporarily unemployed effective August 16, 2020?

Is claimant Karl E. Linderholm able to and available for work effective August 16, 2020?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is currently employed full time with this employer as a Chinese cook. Claimant has been employed with this employer since August 20, 2007.

In March 2020, the employer underwent restructuring and claimant's position was transformed from full-time to part-time. At that time, claimant's hours were reduced. However, they fluctuated between 25 hours per week and 40 hours per week due to staffing levels and the pandemic.

In August 2020, HR manager Linda had a conversation with claimant about the employer's need to take him off the schedule until October 2020. According to the employer, claimant was going to exceed the average hours allotted for a part-time employee, which would be inconsistent with the restructuring plan the employer was supposed to be following. Therefore, as of August 16, 2020, claimant was taken off the schedule until October 5, 2020, when he returned to

employment. Claimant was able to work and available for work during these weeks of temporary absence from the employer. He was also applying for full-time positions with the employer during this time.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was fully unemployed from August 16, 2020, through October 3, 2020. Benefits are allowed for those weeks. From October 4, 2020, forward, claimant was working to such a degree that he was removed from the labor market, and benefits are withheld.

Iowa Code § 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Code § 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Iowa Admin. Code r. 871-24.23(23) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

Here, from August 16, 2020, through October 3, 2020, claimant was performing no services for this employer or any employer and receiving no wages from this employer or any employer. He was totally unemployed for those seven weeks and was eligible to receive unemployment insurance benefits for those seven weeks.

After October 4, 2020, claimant returned to work with the employer. He was reporting wages well in excess of his weekly benefit amount plus fifteen dollars. Additionally, within a month of returning, he was moved back to a full-time position. The testimony in the record indicates that effective October 4, 2020, claimant was working to such a degree that he was removed from the labor market, being neither fully nor partially unemployed. Benefits are withheld effective October 4, 2020.

**DECISION:**

The December 9, 2020 (reference 03) unemployment insurance decision is modified in favor of claimant Karl E. Linderholm. Claimant was totally unemployed and eligible for unemployment insurance benefits from August 16, 2020, through October 3, 2020. Claimant was neither totally nor partially unemployed effective October 4, 2020, and was not eligible for benefits effective October 4, 2020. Benefits are withheld from that point forward.



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Elizabeth A. Johnson  
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March 8, 2021  
Decision Dated and Mailed

lj/scn