

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

GAIL A MCDONALD
Claimant

APPEAL NO. 13A-UI-05135-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 03/24/13
Claimant: Appellant (3)

Section 96.19-38-a & b – Total and Partial Unemployment
Section 96.7-2-a(2) – Same Base Period Employment
871 IAC 24.22(2)f – Part-Time Worker – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated April 22, 2013, reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on June 5, 2013. Claimant participated personally. Employer participated by Julia Church, Hearing Representative Corporate Cost Control with witness Tim Hauptert, Store Director. Exhibit One was admitted into evidence

ISSUES:

The issues are whether claimant is still employed at the same hours and wages and partially unemployed.

FINDINGS OF FACT:

The claimant currently works for a base period employer, part time under the different terms and conditions as contemplated in the original contract of hire. Employer laid claimant off March 2, 2013 because a restaurant closed. Employer then offered work as a demo person starting May 20, 2013. Employer is currently offering the same hours and wages effective May 20.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is no longer partially unemployed and the employer is relieved of benefit charges effective May 19, 2013. Benefits shall be allowed effective March 24, 2013 through May 18, 2013.

Iowa Code section 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, 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.

An individual shall be deemed partially unemployed in any week in which 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 Code section 96.7-2-a(2) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

871 IAC 23.43(4)a provides in part:

(4) Supplemental employment.

a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relieved of benefit charges....

Because the claimant is currently employed part time, claimant is no longer considered partially unemployed. Benefits are withheld effective May 19, 2013. Inasmuch as the current part-time employer was not offering the same wages and hours as in the base period, benefit charges shall be made to its account for the period March 24, 2013 through May 18, 2013.

DECISION:

The April 22, 2013, reference 01, decision is modified in favor of Employer. The claimant is partially unemployed and benefits are allowed, March 24, 2013 through May 18, 2013, provided claimant is otherwise eligible. Benefits are withheld effective May 19, 2013. The account of the current part-time employer shall not be charged for times after May 19, 2013.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/css