

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**GERTRUD G SWORTS**

Claimant

**APPEAL 21A-UI-24127-CS-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**

Employer

**OC: 03/28/21**

**Claimant: Appellant (4)**

Iowa Code §96.5(1)g-Requalification  
Iowa Code §96.5(2)a-Discharge/Misconduct  
Iowa Code § 96.4(3) – Able and Available  
Iowa Admin. Code r. 871-24.22(2)(I)-On-Call Workers  
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Part time, same hours and wages  
Iowa Code § 96.1A(37)a & b – Total and Partial Unemployment  
Iowa Code § 96.7(2)a – Same Base Period Employment

**STATEMENT OF THE CASE:**

On October 27, 2021, the claimant/appellant filed an appeal from the October 22, 2021, (reference 02) unemployment insurance decision that denied benefits based on claimant still employed for the same hours and wages. The parties were properly notified about the hearing. A telephone hearing was held on December 21, 2021. Claimant participated at the hearing. Employer did not call in to participate during the hearing. Exhibits A, B, and C were admitted into the record. Administrative notice was taken of claimant's unemployment insurance benefit records.

**ISSUES:**

Is the claimant able to work and available for work?

Does the claimant meet the definition of being considered partially unemployed?

Does the claimant meet the definition of being considered totally unemployed?

Does the claimant meet the definition of being temporarily unemployed?

Is claimant employed for the same hours and wages?

Has the claimant requalified for benefits since the separation?

Is the employer's account subject to charge?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer in 2015. Claimant works as a part-time floral designer. Claimant is still employed with Employer and has not separated from them since she began working for them in 2015. Claimant was hired to work part-time. Claimant was not guaranteed hours but told them she wanted to work 3 days a week for about 18 hours a week. Claimant's hours varied depending

on the employer's need and if she needed to fill in for co-workers. When claimant was hired she was paid \$9.00 an hour. Claimant earns \$11.50 an hour.

Claimant got COVID and decided that she no longer wanted to work in the store. Claimant did not want to work in the store until she received the COVID vaccine. In March 2021, the employer and claimant agreed that she could work from home. Claimant agreed to come into the store to work if the employer was desperate and needed her help. Claimant returned to working in the store in May 2021.

Since March 28, 2021, claimant worked for the employer each week except claimant did not have any work available to her for the following weeks ending: June 5, 2021, June 12, 2021, July 17, 2021, July 24, 2021, July 31, 2021, and October 31, 2021. (Exhibit C and KCCO).

Claimant was not ill during these weeks and did not have anything limiting her ability to work.

Claimant has not other employers in her base period.

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

For the reasons that follow, the administrative law judge concludes as follows:

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", subparagraph (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)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "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 Code § 96.7(2)a(2)a provides:

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.

(a) 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.

(emphasis added).

Iowa Admin. Code r. 871-24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total unemployment is when someone has received no wages and performed no services during any given week. Id. In this case, the claimant has performed services and earned wages for each week she has claimed benefits except for the following weeks ending: June 5, 2021, June 12, 2021, July 17, 2021, July 24, 2021, July 31, 2021, and October 31, 2021. In each of these weeks the claimant did not earn any wages. In these weeks claimant was totally unemployed and is entitled to benefits. The employer's account (006858) shall be charged.

The next question is whether she is partially unemployed in the remaining weeks. In order to be partially unemployed, an individual must be laid off from full-time employment or working less than his or her regular full-time work week. Id. If an individual is employed in a part-time position

working the same hours and wages as contemplated at hire, he or she cannot be considered partially unemployed. Iowa Admin. Code r. 871-24.23(26). In this case, the claimant was employed in a part-time floral designer position. She has worked part-time hours during her employment. Her hours have fluctuated as was the expectation when she was hired. Claimant was never guaranteed hours by the employer. Her hours were always subject to fluctuation based on the needs of the employer. As the claimant was working in a part-time job in the same hours and wages contemplated at hire, the claimant is not partially unemployed and is not eligible for benefits during these weeks.

The claimant has not separated from the employer and is still currently working for them part-time. The issue of whether claimant has requalified for benefits since the separation does not apply and has not been decided in this decision.

**DECISION:**

The October 22, 2021, (reference 02) unemployment insurance decision is modified in favor of the appellant. The claimant is totally unemployed for the weeks ending: June 5, 2021, June 12, 2021, July 17, 2021, July 24, 2021, July 31, 2021, and October 31, 2021. Claimant is entitled to benefits for these weeks. The employer's account (006858) shall be charged.

Claimant is not partially unemployed the remaining weeks that she claimed benefits. Therefore claimant is not eligible for unemployment insurance benefits effective March 28, 2021. Benefits are withheld.

Claimant has not separated from the employer. The issue of whether claimant has requalified for benefits since the separation has not been determined since it does not apply to this matter.



---

Carly Smith  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau

---

January 21<sup>st</sup>, 2022  
Decision Dated and Mailed

cs/rs

**NOTE TO CLAIMANT:**

- If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.