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

PHILLIP L ELDRIDGE
Claimant

APPEAL NO: 11A-UI-04311-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 01/30/11
Claimant: Respondent (1)

Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits

STATEMENT OF THE CASE:

Hy-Vee, Inc. (employer) appealed a representative's March 25, 2011 decision (reference 01) that concluded Phillip L. Eldridge (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 26, 2011. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Paula Mack of Corporate Cost Control appeared on the employer's behalf and presented testimony from three witnesses, Heather Walker, Mirsad Beganovic, and Darren Casey. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant employed by the employer for less than her usual hours and wages and eligible for full or partial unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on January 19, 2009. He works part time as a night stock clerk at the employer's Des Moines, Iowa store. He continued to work in that capacity at least through the date of the hearing.

The claimant previously worked about three or four nights per week. His rate of pay since February 22, 2010 has been $9.00. As of about December 2010 the employer changed the claimant's schedule to about two nights per week. The reason for the reduction was that after December the employer's business would slow, and the claimant had the lowest speed and accuracy, so it was determined that his hours be the first reduced. As a result of the reduction, the claimant established an unemployment insurance benefit year effective January 30, 2011.

The claimant's base period therefore was set as the fourth quarter 2009 through the third quarter 2010. His average weekly wage for the claim year was $233.10, equating to about 26 hours per week. Since the reduction, the claimant was been working closer to 16 hours per

week. Based on his base period wage credits, all from the employer, the claimant's weekly benefit amount was set as $131.00.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides that a claimant is deemed partially unemployment insurance benefits if he is not employed at his usual hours and wages and earns less than his weekly benefit amount plus $15.00 in other employment. Iowa Code § 96.19-38-b.

871 IAC 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.

Beginning on or about December 2010, the employer was not providing the claimant with substantially the same employment as it provided during his base period. The fact that the employer may have had a good business reason for this reduction has no bearing on the claimant's eligibility. Consequently, the claimant is qualified to receive partial unemployment insurance benefits upon the filing of his claim effective January 30, 2011, provided he was otherwise eligible.

DECISION:

The unemployment insurance decision dated March 25, 2011 (reference 01) is affirmed. The claimant is eligible for partial unemployment insurance benefits for the weeks he was otherwise able and available for his regular work but his prior hours were not provided to him by the employer.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs