

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JUDY C SYDNES**

Claimant

**APPEAL NO. 11A-UI-08521-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**

Employer

**OC: 05/01/11**

**Claimant: Respondent (1/R)**

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

Section 96.4-3 – Able and Available

Section 96.7-2-a(2) – Charges Against Employer's Account

**STATEMENT OF THE CASE:**

Hy-Vee, Inc. (employer) appealed a representative's June 17, 2011 decision (reference 02) that concluded Judy C. Sydnos (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 August 10, 2011. The claimant participated in the hearing. Collin Venenga appeared on the employer's behalf and presented testimony from two other witnesses, Keely Battani and Michelle Hooper. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Were there weeks the claimant was employed by the employer for less than her usual hours and wages even though she remained able and available for work, and is she therefore eligible for full or partial unemployment insurance benefits for those weeks?

Is the employer's account subject to charge?

**FINDINGS OF FACT:**

After a prior period of employment with the employer, the claimant most recently began working with the employer on January 21, 2011. She worked part-time as a deli clerk at the employer's West Des Moines, Iowa store. She turned in a resignation notice on June 14 and her last day of work was June 28, 2011. A determination has not yet been made regarding the separation from employment.

When the claimant was hired through about March 31, 2011, she was usually scheduled to work about three or four shifts per week. However, the claimant had missed work on some occasions, and, as a result, as of about April 1, she was only scheduled to work about two shifts per week; and as of about May 1, the employer only scheduled her for about one shift (three hours) per week. Consequently, the claimant established a claim for unemployment insurance

benefits effective May 1, 2011 seeking benefits for weeks she did not work as previously scheduled. Her weekly benefit amount was calculated to be \$99.00.

For the benefit week ending May 7 the claimant was scheduled to work nine hours but worked only 7.1. She indicated she did not work her full nine hours because of being sent home early because of business being slow. For the benefit week ending May 14 she was scheduled to work nine hours; she arranged to pick up four hours in another department, but worked only 11.8 hours because of being sent home early from the deli on an occasion. For the benefit week ending May 21 she was only scheduled to work three hours; she worked a total of four hours by picking up some additional time elsewhere. For the benefit week ending May 28 she was only scheduled to work three hours, and only worked 2.8 hours because of being sent home early when business was slow. For the benefit week ending June 4 she was scheduled to work three hours but worked 6.8 hours by picking up hours in another department. For the benefit week ending June 11 she was scheduled to work three hours, and worked three hours. For the benefit week ending June 18 she was scheduled to work three hours, but worked nine hours by picking up six hours in another department. For the benefit week ending June 25 she was scheduled to work three hours, but only worked 2.2 hours because of being sent home due to slow business.

For the benefit week ending July 3 the claimant was scheduled to work three hours, but only worked 1.6 hours. This is because on June 28 she chose to leave early, as it was her last day of work and she had company in town.

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

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

Beginning on or about April 1, 2011, the employer was not providing the claimant with substantially the same employment as it initially provided to her. While the employer may have had a good business reason for reducing the hours for which it scheduled the claimant, this is not recognized by the law as a ground to deny partial unemployment insurance benefits. Consequently, the claimant is qualified to receive partial unemployment insurance benefits upon the filing of her claim effective May 1, provided she was otherwise eligible.

However, implicit with the concept of allowing benefits for a claimant who is working fewer hours is that the reduction bringing the earned wages low enough to qualify for partial benefits has been because of the choice of the employer, not that the claimant is not able or willing to work the hours available to her. Rather, she must remain available for work on the same basis as when she was previously working. Iowa Code § 96.4-3; 871 IAC 22(2)(a). The reason the claimant's earnings for the benefit week ending July 2, 2011 were below her partial eligibility level is, at least in part, because she was not able and available to work the number of hours the employer had available to her, and she is thus ineligible for unemployment insurance benefits for that week. 871 IAC 24.23(29).

The final issue is whether the employer's account is subject to charge. An employer's account is only chargeable if the employer is a base period employer. Iowa Code § 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the

individual filed a valid claim.” Iowa Code § 96.19-3. The claimant’s base period began January 1, 2010 and ended December 31, 2010. The employer did not employ the claimant during this time, and therefore the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

During the hearing, it became apparent that there had been a separation from employment after the claim was established. This issue was not included in the notice of hearing for this case, and the case will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5).

**DECISION:**

The unemployment insurance decision dated June 17, 2011 (reference 02) is affirmed. The claimant is eligible for partial unemployment insurance benefits effective May 1, 2011 but for the week ending July 2, 2011. The claimant is not eligible for partial unemployment insurance benefits for the week ending July 2 because she was not able and available for work for the hours provided by the employer. The employer’s account is not subject to charge in the current benefit year. The matter is remanded to the Claims Section for investigation and determination of the separation issue.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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