

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KRISTINA MURPHY
Claimant

APPEAL 21A-UI-16990-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

**OC: 05/16/21
Claimant: Appellant (1R)**

Iowa Code § 96.1A(37) – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2)f – Availability for Work - Part-time Worker/Student
Iowa Admin. Code r. 871-23.43(4)a – Supplemental Employment

STATEMENT OF THE CASE:

The claimant, Kristina Murphy, filed an appeal from the July 30, 2021, reference 02, unemployment insurance decision that denied benefits based upon the conclusion she was receiving the same hours and wages as in her contract of hire effective May 16, 2021. After due notice was issued, a telephone conference hearing was scheduled to be held on September 24, 2021, at 9:00 a.m. The claimant participated. The employer participated through former store manager, Matt Kundert, District Director Jeremy Low, and Store Director Valerie Kleinow. Exhibits 1, A and B were received into the record.

ISSUES:

Is the claimant partially unemployed and available for work?
If so, is the employer's account liable for potential charges?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds:

The claimant started working for the employer, Hy-Vee Inc, as a part-time front end clerk on July 14, 2020. The claimant's hourly rate of pay is \$15.00.

The employer has an employee manual. Within its employee manual is a section regarding employee classification, the section states that if an employee is part-time, then they are scheduled hours as needed by business necessity below 30 hours per week.

The following is the claimant's base period as reflected in the administrative record Wage -A:

	2020/1	2020/2	2020/3	2020/4
Quillin's Iowa Inc	\$4306	\$3360	\$465	
Tasc Inc		\$1142		
Hy-Vee Inc			\$3415	\$5539

On May 16, 2021, the claimant filed an effective claim for benefits. Starting in March 2021, the claimant's hours fell below 20 hours per week quite regularly. The administrative record shows the claimant's weekly benefit amount is \$240.00.

The administrative record DBRO shows the claimant made less than her weekly benefit amount plus \$15 for the weeks ending May 29, 2021, June 12, 2021, June 19, 2021, June 26, 2021, July 3, 2021, July 10, 2021, July 17, 2021, and July 24, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was partially unemployed and this part-time employer is relieved of benefit charges.

Iowa Code section 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 section 96.1A(37) 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 Code section 96.7(2)a(2)(a), (b), and (c) 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.

(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.

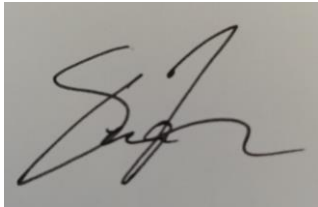
Because the claimant has other base-period wages and is currently employed part-time, she may be considered partially unemployed. Partial benefits may be allowed if she is otherwise eligible. Inasmuch as the current part-time employer is offering the same wages and hours as in the base period contemplated at hire, no benefit charges shall be made to its account.

DECISION:

The July 30, 2021, reference 02, unemployment insurance decision is affirmed. The claimant is partially unemployed and benefits are allowed, provided she is otherwise eligible.

REMAND:

The monetary eligibility issue from the base period wage history (employer account number #006858) as delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.



Sean M. Nelson
Administrative Law Judge
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September 29, 2021
Decision Dated and Mailed

smn/mh