

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TRICIA R HINH**  
Claimant

**APPEAL NO. 11A-UI-06246-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 03/27/11**  
**Claimant: Appellant (1)**

Section 96.4(3) – Able & Available  
Section 96.4(3) – Still Employed Same Hours and Wages  
Section 96.7(2) – Employer Liability

**STATEMENT OF THE CASE:**

Tricia Hinh filed a timely appeal from the May 3, 2011, reference 02, decision that denied benefits effective March 27, 2011 based on an Agency conclusion that she was not partially unemployed from Hy-Vee. After due notice was issued, a hearing was held on June 8, 2011. Ms. Hinh participated. Shaun Lampel of Corporate Cost Control represented the employer and presented testimony through Store Operations Manager Tina Witthoff. The administrative law judge took official notice of the wages the claimant reported to Workforce Development.

**ISSUES:**

Whether the claimant was partially unemployed since establishing the claim for benefits that was effective March 27, 2011

Whether the employer's account may be assessed for benefits paid to the claimant.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Tricia Hinh established a new claim for unemployment insurance benefits that was effective March 27, 2011. Workforce Development calculated her weekly benefit amount at \$170.00. In other words, for any week in which Ms. Hinh is deemed eligible for benefits, \$170.00 would be the maximum benefit amount available. Ms. Hinh continued her claim through April 30, 2011 and then discontinued the claim. For each week from the effective date of the claim through the benefit week that ended April 30, 2011, Ms. Hinh reported wages of \$200.00 or substantially more.

Ms. Hinh commenced part-time employment with Hy-Vee in October 2009 and continues in the employment under the same conditions. Ms. Hinh is a fuel store clerk. Hy-Vee has not cut Ms. Hinh's work hours. Ms. Hinh asked Hy-Vee to reduce her work hours while she performed work for another employer for a few weeks. Hy-Vee's work week runs from Monday to Sunday. While Hy-Vee does not guarantee a specific number of work hours for part-time employees,

Ms. Hinh's work hours at Hy-Vee averaged 25 to 35 per week. Ms. Hinh's work hours and wages for the relevant period were as follows:

Hy-Vee work week end date	# of hours worked	wages paid
3/27/11	9.1	72.80
4/3/11	26.3	210.40
4/10/11	12.9	103.20
4/17/11	12.4	99.20
4/24/11	30.0	240.00
5/1/11	31.6	252.80
5/8/11	33.6	268.80
5/15/11	31.7	253.60
5/22/11	33.6	268.80
5/29/11	35.3	282.40

#### REASONING AND CONCLUSIONS OF LAW:

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. Iowa Code section 96.19(38)(b).

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. 871 IAC 24.23(26). Contract for hire merely means the established conditions of the employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986).

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. Contribution rates based on benefit experience.

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(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.]

The evidence in the record establishes that Ms. Hinh cannot be deemed partially unemployed for the period of March 27, 2011 through April 30, 2011, because for each week she has been paid wages exceeding \$15.00 more than her \$170.00 weekly unemployment insurance benefit amount. This alone is enough to make her ineligible for unemployment insurance benefits under a theory of partial unemployment. In addition, any change in Ms. Hinh's work hours at Hy-Vee was initiated by Ms. Hinh, not by the employer. Benefits are denied effective March 27, 2011.

**DECISION:**

The Agency representative's May 3, 2011, reference 02, is affirmed. The claimant has not been partially unemployed since she established her claim for benefits and is not eligible for unemployment insurance benefits under a theory of partial unemployment. Benefits are denied effective March 27, 2011 and the disqualification continues at this time.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/kjw