

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

VI T MISSIAEN
Claimant

HY-VEE INC
Employer

APPEAL 18A-UI-02634-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/21/18
Claimant: Appellant (1)

Iowa Code § 96.19(38)B – Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Same Hours and Wages

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 15, 2018, (reference 01) unemployment insurance decision that denied benefits as of January 21, 2018. The parties were properly notified about the hearing. A telephone hearing was held on March 23, 2018. Claimant participated. Employer participated through hearing representative Keith Mokler, store director Brett Shellman, and store director Kelly Kayser. Official notice was taken of the administrative record with no objection.

ISSUES:

Is the claimant able to work and available for work effective January 21, 2018?

Is the claimant still employed at same hours and wages?

Is the claimant eligible to receive partial benefits?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was hired as a part-time staff pharmacist on August 14, 2017. Claimant is still employed with the employer as a staff pharmacist. When claimant was hired, the employer did not guarantee her a set number of hours each week. The employer does not guarantee part-time employees a set number of hours.

Mr. Shellman hired claimant because another employee was going to be off work due to a medical issue. Mr. Shellman was trying to replace that employee's 45 hours per week. When claimant was hired, she requested to work 24 to 32 hours per week. Mr. Shellman did not guarantee claimant that she would receive 24 to 32 hours per week.

From August 14, 2017 through December 2017, claimant averaged 24 to 32 hours per week. Claimant testified in January 2017, her hours started to decrease. Claimant testified she

worked for the employer on: January 2, 3, 5, 9, and 15, 2018; February 6, 8, 9, 12, 13, 14, 16, 19, 21, 22, 23, and 27, 2018; and March 6, 7, 8, 9, 13, 14, 15, 17, and 20, 2018. Claimant is currently scheduled to work for the employer on: March 23, 27, and 30, 2018. Claimant declined to work for the employer on January 17 and 18, 2018, because she was helping her husband with his work and she was not available to work for the employer. Claimant was also offered work at the Iowa Falls store in January 2018 and February 2018, but she did not accept those shifts because they were 90 minutes away and she had been promised she would not have to work more than 60 minutes away.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that claimant is not considered to be partially unemployed effective January 21, 2018.

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 Admin. Code r. 871-24.22(2) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Code section 96.19(38) 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 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.

Claimant is a part-time employee for this employer. Claimant's argument that the employer guaranteed her 24 to 32 hours per week when she was hired is not persuasive. Mr. Shellman credibly testified that claimant requested 24 to 32 hours per week, but he did not guarantee her a set number of hours per week. Ms. Kayser credibly testified that the employer does not guarantee any part-time employees a set number of hours. Ms. Kayser credibly testified the employer only guarantees regular-time and full-time employees a set number of hours.

Although the employer may have reduced the number of shifts claimant received per week starting in January 2018, the employer never guaranteed her a set number of hours. Therefore, because claimant was not guaranteed a set number of hours, claimant is still considered to be employed in her part-time job at the same hours and wages as contemplated in her original contract of hire. Furthermore, since claimant does not have full-time base-period wages and the level of employment is consistent with the base-period wage history with this employer, she may not be considered partially unemployed. As such, benefits are denied as of January 21, 2018.

DECISION:

The February 15, 2018, (reference 01) decision is affirmed. Claimant is not considered partially unemployed. Benefits are denied as of January 21, 2018.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs