

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JERROLD A STREINZ
Claimant

APPEAL NO. 10A-UI-07079-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 03/28/10
Claimant: Respondent (4)

Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits
Section 96.7-2-a(2) – Charges Against Employer’s Account

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated May 5, 2010, reference 02, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 1, 2010. Claimant participated. Employer participated by Leah Hafel, Human Resources Manager. The record consists of the testimony of Jerrold Streinz and the testimony of Leah Hafel. Official notice is taken of agency records.

ISSUES:

Whether the claimant is entitled to partial unemployment insurance and benefits; and

Whether the employer can be relieved of charges.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

Until June 1, 2010, the claimant was employed part time by Hy-Vee Inc. He started his job on October 29, 2009. The claimant’s hours with Hy-Vee varied from 8 hours to 32 hours per week. On occasion he did get 40 hours per week. Prior to working for Dubuque Janitorial Service, the claimant worked for Thermal Fischer. He was permanently laid off from that job at the end of March 2009. The claimant earned wages from Thermal Fischer during his base period but did not earn wages from Hy-Vee during his base period.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides that a claimant is deemed partially unemployed 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 section 96.19-38-b.

Beginning on or about March 28, 2010, there have been weeks in which the claimant has not held the same employment as he did during his base period. Consequently, the claimant is qualified to receive partial unemployment insurance benefits upon the filing of his claim effective March 28, 2010, provided he was otherwise eligible.

In order to be otherwise eligible, the claimant must remain available for work on the same basis as when he was previously working full time and earning the wage credits on which his unemployment insurance benefits are based. Iowa Code section 96.4-3; 871 IAC 24.22(2)(a). He must also report all wages attributable to weeks in which he files weekly claims.

The next 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 section 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 section 96.19-3. The claimant's base period began October 1, 2008 and ended June 30, 2009. 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.

DECISION:

The unemployment insurance decision dated May 5, 2010 (reference 02) is modified in favor of the employer. The claimant is eligible for full or partial unemployment insurance benefits for weeks after March 28, 2010 in which his regular full-time hours were not made available to him even though he is available for work on the same full-time basis.

The employer's account (006858-000) is not subject to charge in the current benefit year.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css