

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KALINA EWOLDT
Claimant

APPEAL 18A-UI-03279-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 02/11/18
Claimant: Respondent (2)

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Availability Disqualifications Same Hours and Wages
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

Hy-Vee, Inc. (employer) filed an appeal from the March 1, 2018, reference 01, unemployment insurance decision that allowed benefits based upon the determination Kalina Ewaldt (claimant) was eligible for partial unemployment insurance benefits because she was available for her regular hours of work and was not working in the same pattern of employment as in the base period. The parties were properly notified about the hearing. A telephone hearing was held on April 5, 2018. The claimant did not respond to the hearing notice and did not participate. The employer participated through Store Director Matt Hildebrand, Accounting and HR Manager Glenda Bielenberg, and Kitchen Manager Mark Henkel. No exhibits were offered into the record. The administrative law judge took official notice of the administrative record, specifically the claimant's wage history (WAGEA) and database readout (DBRO).

ISSUES:

Is the claimant partially unemployed effective February 11, 2018?
Is the claimant available for work effective February 11, 2018?
Is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired to work as a Kitchen Clerk beginning on August 2, 2016. She was told at the time of hire that part-time employees typically work between ten and 24 hours per week. She was available any hours the employer needed her to work.

The claimant filed her claim for benefits effective February 11, 2018. Her base period begins October 1, 2016 and ends September 30, 2017. The employer is the only employer in the claimant's base period. She earns \$9.25 per hour in wages. The administrative record shows that during her base period the claimant averaged 28 hours per week during the fourth quarter

of 2016, 30 hours per week during the first quarter of 2017, 22 hours per week during the second quarter of 2017, and 26 hours during the third quarter of 2017.

In the fourth quarter of 2017, the claimant reduced her availability with the employer to two days as she took another part-time job with a different employer. As of the end of January 2018, the claimant separated from the other job, but is still only available to the employer for two days a week. She averages 14 hours per week with the employer. The claimant has filed weekly continued claims for the weeks ending March 10 and 17 of 2018. She has reported wages earned both weeks.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially or totally unemployed. The issues availability for work and the chargeability of the employer's account are moot at this time. Benefits are denied.

Iowa Code § 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 § 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.

Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total unemployment is when someone has received no wages and performed no services during any given week. *Id.* In this case, the claimant has performed services and earned wages for each week she has claimed benefits. She is not totally unemployed.

The next question is whether she is partially unemployed. In order to be partially unemployed, an individual must be laid off from full-time employment or working less than his or her regular full-time work week. *Id.* If an individual is employed in a part-time position working the same hours and wages as contemplated at hire, he or she cannot be considered partially unemployed. Iowa Admin. Code r. 871-24.23(26). The claimant was hired into a part-time position with fluctuating hours. She has worked part-time hours during her base period and her hours have fluctuated as was the expectation when she was hired. She continues to work for the employer. As the claimant is working in a part-time job in the same hours and wages contemplated at hire, the claimant is not partially unemployed and is not eligible for benefits.

As the claimant is not partially unemployed nor has she had any weeks of total unemployment, the issues of her availability for work and the chargeability of the employer's account are moot at this time.

DECISION:

The March 1, 2018, reference 01, unemployment insurance decision is reversed. The claimant is not partially unemployed and benefits are denied. The issues of availability for work and the chargeability of the employer's account are moot at this time.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn