

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHANCE C HULTEN
Claimant

HY-VEE INC
Employer

APPEAL 20A-UI-10540-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (1R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The claimant/appellant, Chance C. Hulten, filed an appeal from the August 25, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 16, 2020. The claimant participated personally. The employer, Hy-Vee Inc., participated through Barbara Buss, hearing representative with Corporate Cost Control. Julie Headley testified.

The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Does the claimant meet the definition of being considered partially unemployed?
Is the claimant able to work and available for work effective March 15, 2020?
If so, is the employer’s account liable for potential charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed part-time as a dairy clerk and was separated from employment on August 18, 2020. The claimant’s permanent separation has not yet been addressed by the Benefits Bureau.

Claimant initially established his claim for benefits with an effective date of March 15, 2020 because of a reduction of hours from his part-time employer, Cooney’s Beverage Co., where he worked as a bartender.

Claimant last performed work at Hy-Vee Inc. on April 6, 2020. He worked twelve hours for the week ending March 21, 2020 at Hy-Vee, earning \$11.00 per hour. He did not perform work for the weeks ending March 28 and April 4, 2020, even though work was available. Claimant was

not comfortable working due to medication and personal health conditions, in light of the COVID-19 pandemic. Claimant stated he also had no health insurance and was concerned about getting sick. Claimant returned to work for a five hour shift on April 6, 2020 before notifying the employer he was not comfortable working and discontinued working. Claimant also thought as businesses closed and the employer remained open, that it would increase his risk to being exposed to COVID-19. Claimant's doctor did not advise claimant to self-isolate at the time but later agreed with his choice. Claimant remained an active employee until August 18, 2020. Employer had work available to claimant.

Claimant returned to employment as a bartender and works one day a week.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "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.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

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 96.1A, subsection 38, paragraph "b", subparagraph (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. 871-24.23(16) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

For a totally unemployed individual to be eligible to receive benefits, he must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that he is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22.

The credible evidence presented is that effective March 15, 2020, claimant restricted himself from working for this employer, as he has health conditions which could make him higher risk if

exposed to COVID-19. Employer had work available to claimant during this time. Claimant has not established he was able to and available for work effective March 15, 2020.

The issue of the claimant's August 2020 separation from employment is remanded to the Benefits Bureau for an initial investigation and decision.

Note to Claimant: This decision denies benefits. *If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.* If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

DECISION:

The unemployment insurance decision dated August 25, 2020, (reference 01) is affirmed. The claimant is not able and available for work effective March 15, 2020. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time the claimant is able to and available for work.

REMAND: The issue of the claimant's August 2020 separation from employment is remanded to the Benefits Bureau for an initial investigation and decision.



Jennifer L. Beckman
Administrative Law Judge
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October 20, 2020
Decision Dated and Mailed

jlb/mh