

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRUCE D TULEY**  
Claimant

**APPEAL NO: 12A-UI-04881-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 02/06/11**

**Claimant: Appellant (1)**

Section 96.4-3 – Availability for Work

Section 96.3-3 – Eligibility for Partial Unemployment Insurance Benefits

Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits

**STATEMENT OF THE CASE:**

Bruce D. Tuley (claimant) appealed a representative's April 19, 2012 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits under his February 5, 2012 claim year in connection with his employment with Hy-Vee, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 18, 2012. This appeal was consolidated for hearing with one related appeal, 12A-UI-04882-DT. The claimant participated in the hearing. Keith Mokler of Corporate Cost Control appeared on the employer's behalf and presented testimony from one witness, Natalie McGee. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Is the claimant employed by the employer for less than his usual hours and wages and eligible for full or partial unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant started working for the employer on June 25, 2010. He worked and continues to work "part time" (about 25 hours per week) as a battery changer/maintenance worker in the employer's Chariton, Iowa distribution center. The claimant had previously had full time employment with another employer, Infrasource Underground, from which there was a layoff in early 2009; at this time the claimant established an initial claim year effective February 8, 2009. After that employment eventually ended in about July 2009 and his initial claim year expired, the claimant established a second unemployment insurance claim effective February 7, 2010. Upon expiration of that second claim year, and after a conclusion that he was no longer eligible to receive additional emergency unemployment compensation (EUC) on his 2010 claim year, he established a third claim year effective February 6, 2011. Upon expiration of that third claim year, the claimant established a fourth claim year effective February 5, 2012. The claimant's base period for this fourth and current benefit year is October 1, 2010 through September 30,

2011. The claimant's only wage credits in this new and current base period are from the current employer, Hy-Vee, Inc.; there are no remaining wage credits in the base period from his employment with Infrasource Underground.

The claimant had sufficient wage credits from the current employer in his third and current base period to be monetarily eligible for regular benefits this claim year, meaning that he would not be eligible for continued EUC benefits under the 2010 or 2011 claim years. His weekly benefit amount for his current claim year is \$154.00 per week.

From the start of his employment and particularly since about late October 2010 through the current date, the claimant's employment with his current employer has been to work about 25 to 27 hours per week. For all of the weeks for which he has filed weekly claims since establishing the current claim year effective February 5, 2012, he has reported earning gross wages of at least \$220.00. His hourly pay started as \$9.00 per hour, went to \$9.20 per hour in January 2011, and went to \$9.55 in January 2012.

#### **REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant is eligible for partial unemployment insurance benefits. A claimant is considered partially unemployed when the claimant has been separated or laid off from his "regular employer" and earns less than his weekly benefit amount plus \$15.00 in other employment. Iowa Code §96.19-38(b); see also Iowa Code § 96.3-3. The claimant was separated from his prior regular job in 2009. In essence, the question here is whether that prior "regular employer" remains his "regular employer" in his current claim year.

The Agency has defined a "week of unemployment" as "a week in which an individual performs less than full-time work for any employing unit if the wages payable with respect to such week are less than a specified amount," which would be the partial earnings allowance described above. 871 IAC 24.1(138). Under 871 IAC 24.1(135)(c), "full-time week" is defined as "the number of hours or days per week of full-time work currently established by schedule, custom or otherwise for the kind of service an individual performs for an employing unit."

For the claim for the benefit years beginning February 8, 2009 and February 7, 2010, the claimant's "regular workweek" was based upon working full time for Infrasource Underground. In the present case for the benefit year beginning February 5, 2012, the claimant's "regular workweek" must be based upon his status as of the point he filed his claim for his current year. The evidence indicates that at that point the claimant was working about 25 to 27 hours per week, which he had done since October 2010, thus becoming his current "contract of hire" – the terms of employment agreed to between an employee and an employer, either explicitly or implicitly. This establishes the claimant's "regular workweek" for the current benefit year for determining whether he was partially unemployed under the statutes and rules.

The claimant's employment level with the employer has not decreased. The employer has been providing the claimant with substantially the same as it provided during his base period. Further, the claimant is consistently earning more than the \$169.00 partial benefit threshold applicable to his current benefit year. Iowa Code § 96.3-3. Consequently, the claimant is not qualified to receive partial unemployment insurance benefits. The claimant's current weekly benefit amount is \$154.00; the claimant's weekly earnings are far in excess of this amount, and so under the formula he has no remaining eligibility.

**DECISION:**

The unemployment insurance decision dated April 19, 2012 (reference 01) is affirmed. The claimant is currently not eligible for partial unemployment insurance benefits in his benefit year effective February 5, 2012.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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