

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CHRISTOPHER D MANSKER
Claimant

HY-VEE INC
Employer

APPEAL NO. 20A-UI-03856-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (4)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Christopher Mansker filed a timely appeal from the April 30, 2020, reference 03, decision that denied benefits effective March 15, 2020, based on the deputy's conclusion that Mr. Mansker was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on May 27, 2020. Mr. Mansker participated. The employer waived participation in the hearing. Exhibits 1, 2 and A were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO and WAGEA.

ISSUES:

Whether the claimant has been able to work and available for work since he established the original claim that was effective March 15, 2020.

Whether the claimant has been partially unemployed and/or temporarily unemployed since he established the original claim that was effective March 15, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Christopher Mansker established an original claim for benefits that was effective March 15, 2020. Iowa Workforce Development set Mr. Mansker's weekly benefit amount at \$436.00. Mr. Mansker has made weekly claims for the nine consecutive weeks between March 15, 2020 and May 16, 2020. Mr. Mansker has reported wages and received benefits as indicated below. BWE means benefit week end date. AMT RP means the amount of wages Mr. Mansker reported. AMOUNT means the amount of regular state benefits Iowa Workforce Development has disbursed.

<u>BWE-DATE</u>	<u>AMT-RP</u>	<u>AMOUNT</u>
03/21/20	688.00	0.00
03/28/20	375.00	170.00
04/04/20	320.00	225.00
04/11/20	261.00	284.00
04/18/20	463.00	0.00

04/25/20	331.00	214.00
05/02/20	435.00	0.00
05/09/20	557.00	0.00
05/16/20	440.00	0.00
05/23/20	432.00	0.00

Mr. Mansker established his claim for benefits in response to being furloughed (temporarily laid off) from his full-time employment with Goodwill Industries of Central Iowa effective March 18, 2020 in connection with the Covid-19 pandemic. The wages Mr. Mansker reported for the week that ended March 21, 2020 were his most recent wages from Goodwill. The furlough from Goodwill was supposed to last until May 31, 2020. However, Goodwill has given notice to Mr. Mansker that he will not be recalled to the employment.

Mr. Mansker is a current employee of Hy-Vee, Inc. Mr. Mansker began his Hy-Vee employment in January 2019. Mr. Mansker began the Hy-Vee employment as a part-time C-Store clerk. In May 2019, Mr. Mansker voluntarily transitioned to a full-time C-Store clerk position at Hy-Vee. In November 2019, Mr. Mansker voluntarily transitioned back to part-time status with Hy-Vee. Mr. Mansker's transition back to part-time status with Hy-Vee coincided with the beginning of Mr. Mansker's full-time employment with Goodwill. The Hy-Vee employment became supplemental in nature. Hy-Vee has not decreased the number of hours it has available for Mr. Mansker and has not decreased his hourly wage. That hourly wage is \$11.00. All of the wages Mr. Mansker has reported for the period beginning March 22, 2020 have been Hy-Vee wages. Since Mr. Mansker established his claim for benefits, he has been physically and mentally able to work full-time. Since Mr. Mansker established his claim for benefits, he has made himself available for all of the work Hy-Vee has for him, has not declined any work, and has not been absent from work due to illness or otherwise.

Hy-Vee has provided a record of Mr. Mansker's scheduled work hours for the period beginning Monday, March 16, 2020 through Sunday, May 24, 2020. Hy-Vee has provided a record of the hours Mr. Mansker actually worked for the period of Monday, March 16, 2020 through Sunday, May 17, 2020. Mr. Mansker advises that the information provided by Hy-Vee is accurate. Pursuant to the information provided by Hy-Vee, Mr. Mansker's weekly work hours and weekly wages during the period when Mr. Mansker's claim has been in effect are as set forth below. The wages reported by Mr. Mansker are added as the right-most column as AMT RP for comparison.

BENEFIT WEEK END	HOURS WORKED	WAGES	AMT RP
3/21/20	22.25	\$244.75	688.00
3/28/20	33.99	\$373.89	375.00
4/4/20	29.06	\$319.66	320.00
4/11/20	23.65	\$260.00	261.00
4/18/20	31.95	\$351.45	463.00
4/25/20	30.11	\$331.21	331.00
5/2/20	40.02	\$440.22	435.00
5/9/20	37.95	\$417.45	557.00
5/16/20	40.01	\$440.11	440.00

Hy-Vee has provided Mr. Mansker's scheduled work hours for the week of May 17-23, 2020. The schedule indicates Mr. Mansker was scheduled to work 39 hours that week.

REASONING AND CONCLUSIONS OF LAW:

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".

An individual shall be deemed partially unemployed in any week in which, 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. Iowa Code Section 96.19(38)(b).

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 96.19(38)(c).

Workforce Development rule 871 IAC 24.23(26) provides as follows:

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

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.

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. Contribution rates based on benefit experience.

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(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.

Because Hy-Vee has not reduced the work hours or wages it has available for Mr. Mansker in what became a part-time employment, Mr. Mansker cannot be deemed partially unemployed from the Hy-Vee employment. Accordingly, Hy-Vee's employer account cannot be charged for benefits paid to Mr. Mansker under a partial-unemployment analysis and will not be subject to charge so long as that employer continues to provide Mr. Mansker with the same employment.

However, in light of Mr. Mansker's Covid-19 related layoff from his full-time Goodwill employment, additional consideration must be given to whether Mr. Masker can still be eligible for benefits for any of the weeks in question based on an able and available determination.

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

Benefits 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 Admin. Code r. 871-24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

During the week that ended March 21, 2020, Mr. Mansker was physically and mentally able to work, made himself available for full-time work and was effectively working full-time hours between the two employments. For that reason, Mr. Mansker cannot be considered

unemployed within the meaning of the law during the week that ended March 21, 2020 and is not eligible for benefits.

During the five weeks between March 22, 2020 through April 25, 2020, Mr. Mansker continued to be physically and mentally able to work, continued to make himself available for full-time work and was working less than full-time through no fault of his own. Mr. Mansker met the able and available requirements for the period of March 22, 2020 through April 25, 2020 and is eligible for benefits for those five weeks, provided he meets all other eligibility requirements.

Mr. Mansker has been working full-time work hours since the week that began April 26, 2020 and cannot be deemed unemployed within the meaning of the law since that date. During the three weeks between April 26, 2020 and May 16, 2020, Mr. Mansker continued to be physically and mentally able to work, continued to make himself available for full-time work, and was effectively employed full-time. In addition, the work schedule provided by Hy-Vee indicates full-time employment for the week of May 17-23, 2020. Benefits are denied effective April 26, 2020 because the full-time employment with Hy-Vee effectively removed Mr. Mansker from the broader labor market.

DECISION:

The April 30, 2020, reference 03, is modified in favor of the claimant as follows. The claimant has not been partially unemployed from the Hy-Vee employment at any point since March 15, 2020. Accordingly, the employer account of Hy-Vee cannot be charged for benefits paid to the claimant under a partial-unemployment determination and will not be subject to charge so long as the employer continues to provide the claimant with the same employment. During the five weeks between March 22, 2020 through April 25, 2020, the claimant was able to work, was available for work, but was receiving less than full-time employment through no fault of his own due to being laid off from another full-time employment. The claimant is eligible for benefits for each of the five weeks between March 22, 2020 through April 25, 2020, provided he meets all other eligibility requirements. The claimant has been employed on a full-time basis since the week that began April 26, 2020, cannot be deemed unemployed within the meaning of the law since that date, and thereby has not met the "availability" requirement since that date. Benefits are denied effective April 26, 2020 pursuant to the availability determination.



James E. Timberland
Administrative Law Judge

June 18, 2020
Decision Dated and Mailed

jet/sam