

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

MARK L ODOR  
915 W HILL AVE APT 106  
PLEASANT HILL IA 52641

HY-VEE INC  
c/o TALX UCM SERVICES INC  
PO BOX 283  
ST LOUIS MO 63166-0283

TALX UC EXPRESS  
3799 VILLAGE RUN DR #511  
DES MOINES IA 50317

Appeal Number 05A-UI-08260-DWT  
OC: 07/03/05 R: 02  
Claimant: Respondent (4)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4-3 – Ability to and Availability for Work  
Section 96.5-1-a – Voluntary Quit for Other Employment  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Hy-Vee, Inc. (employer) appealed a representative's August 3, 2005 decision (reference 01) that concluded Mark L. Odor (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge, because the claimant was not working the same number of hours that he did in his base period. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 30, 2005. The claimant participated in the hearing. David Williams, a TALX representative, appeared on the employer's behalf with Rick Anderson, the store manager, and Debbie Neisess, the fuel store manager, as the employer's witnesses. Kareey White observed the hearing. 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.

ISSUES:

As of July 3, 2005, was the claimant working fewer hours than he had usually worked during his base period?

As of August 6, 2005, did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on June 14, 1999. The claimant worked as a part-time fuel clerk for the employer. Until September 2004, the claimant worked an average of 35 to 40 hours a week. From September 2004 through May 20, 2005, the claimant worked an average of 20 to 25 hours a week. From May 20 to June 13, the claimant worked around 35 hours a week because a full-time employee had quit. The claimant and other employees worked extra hours until the employer hired another employee. After June 13, the claimant worked an average of 20 hours a week. Neisess became the store manager on June 13.

When the claimant asked for time off on June 6 through 9, and July 2, 3, 15, 16 and 17, the employer did not schedule him to work. The employer also accommodated the claimant's restricted availability from June 13 through 16, when he could only work 4:00 p.m. to 10:00 p.m., and on June 23, when he had to be off work by 5:00 p.m. Even though the claimant asked for more hours, he wanted to work during the week instead of the weekend, when the employer could have scheduled him for more hours. During the week of July 3, 2005, the claimant established a claim for unemployment insurance benefits. Shortly after the claimant established his claim for benefits, the employer hired another employee.

The claimant filed claims for the week ending July 9 and reported gross wages of \$179.00; he filed a claim for the week ending July 16 and reported wages of \$111.00; he filed a claim for the week ending July 23 and reported wages of \$207.00; he filed a claim for the week ending July 30 and reported wages of \$175.00; and he filed a claim for the week ending August 6. The claimant reported he had earned \$40.00 gross wages for the week ending August 6. The claimant received \$69.00 in benefits for the week ending July 9; \$137.00 in benefits for the week ending July 16; \$41.00 in benefits for the week ending July 23; \$73.00 in benefits for the week ending July 30 and \$199.00 in benefits for the week ending August 6, 2005.

On July 24, the claimant gave the employer his resignation notice. The claimant resigned because he had accepted other employment. The claimant gave the employer a two-week notice and indicated he would work until August 6, 2005.

On August 6, the employer did not allow the claimant to work. Based on a customer complaint, the employer suspended the claimant his last day of work. After the claimant's new employer learned about the suspension and other problems noted in the claimant's personnel file, the new employer rescinded the employment offer.

## REASONING AND CONCLUSIONS OF LAW:

When the claimant initially established his claim during the week of July 3, he was still working part time for the employer. The law provides that 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 a reduced workweek, the claimant cannot be considered partially unemployed. 871 IAC 24.23(26). The facts establish the claimant usually worked about 20 hours a week. From May 20 to June 13, he worked 35 hours a week because an employee had quit. The claimant worked extra hours until the employer could hire another employee. The 35 hours a week cannot be used as the basis as to whether the claimant is partially unemployed since this was only a temporary increase in the claimant's scheduled hours. As of July 3, the facts indicate the claimant worked around 20 hours a week, or about the same number of hours he usually worked a week. While the evidence indicates there were weeks the claimant worked less than 20 hours in July, the claimant also asked for time off, which prevented the employer from scheduling him for more hours.

Going one step further in the analysis, each week a claimant files a claim for benefits, he must be able to and available for work. Iowa Code §96.4-3. When a claimant's availability is unduly limited because he is not willing to work during the hours in which suitable work is available, the law presumes a claimant is not eligible to receive benefits. 871 IAC 24.23(16). For the weeks ending July 6 through August 6, the claimant filed weekly claims. Since eligibility should be determined on a week-to-week basis, the wages the claimant reported for each of these weeks should be examined to determine if he worked a reduced workweek or if the claimant unduly restricted the hours he was available to work. For the weeks ending July 9 and 16, the claimant's wages were less than his maximum weekly benefit amount, but the claimant also requested time off during these weeks. Since the claimant's request for time off resulted in fewer hours, he is not eligible to receive benefits for the weeks ending July 9 and 16. The facts indicate that during the week ending July 23, the claimant cannot be considered partially unemployed, because he did not work a reduced workweek.

During the weeks ending July 30 and August 6, the claimant did not ask for any time off, but worked a reduced workweek. During these weeks the claimant earned gross wages that were less than his maximum weekly benefit amount of \$199.00. The claimant is eligible to receive partial benefits for these weeks, the weeks ending July 30 and August 6.

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer. Iowa Code §96.5-1. If, however, a claimant voluntarily quit because he has accepted other employment, the claimant is not disqualified from receiving benefits and the employer's account will not be charged. Iowa Code §96.5-1-a. The claimant resigned as of August 6 because he had accepted an offer of another job. The fact the "new" employer ultimately rescinded the employment offer does change the fact the claimant quit for another job. Under these circumstances, the claimant quit his employment on August 6 for reasons that qualify him to receive unemployment insurance benefits. The employer's account will not be charged for benefits as of August 7, 2005.

## DECISION:

The representative's August 3, 2005 decision (reference 01) is modified in the employer's favor. As of July 3, 2005, the claimant was not partially unemployed. Therefore, for the weeks ending July 9, 16 and 23, the claimant is not legally entitled to receive unemployment insurance benefits. The claimant is eligible to receive partial benefits for the weeks ending July 30 and

August 6, 2005. The claimant quits as of August 6, 2005, for reasons that qualify him to receive benefits as of August 7, 2005. The employer's account will not be charged. The claimant is legally entitled to receive benefits for the weeks ending July 30 and August 6, 2005. As of August 7, 2005, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The claimant has been overpaid \$247.00 in benefits he received for the weeks ending July 9 through 23, 2005.

dlw/kjw