

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATTY R SMITH
Claimant

APPEAL NO: 11A-UI-05235-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 12/19/10

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Patty R. Smith (claimant) appealed a representative's April 7, 2011 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits in her new benefit year because she was still employed in her same hours and wages with her base period employer Hy-Vee, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 16, 2011. This appeal was consolidated for hearing with two related appeals, 11A-UI-05236-DT and 11A-UI-05237-DT. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. Based on the evidence, the arguments of the claimant, 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 her usual hours and wages and eligible for full or partial unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on November 15, 2009. She worked part time (20 – 25 hours per week) in the employer's Chariton, Iowa perishables warehouse. She typically worked Monday through Friday from 2:00 p.m. to 6:00 p.m., and would frequently additionally pick up an additional shift during the week. She continued to work for the employer on this basis through April 26, 2011.

The claimant had originally established an unemployment insurance benefit year effective December 21, 2008 after a layoff from her primary full-time employer; that layoff became permanent in about June 2009. After June 2009 she received a payout of about \$93.00 (gross) from her prior employer for what was apparently residual vacation pay. For her December 21, 2008 benefit year, her base period was July 1, 2007 through June 30, 2008, and her claim was based solely on her wage credits from her prior primary employer. Upon exhaustion of benefits from the 2008 claim year, the claimant established a second claim year effective December 20,

2009. For that benefit year, her base period was July 1, 2008 through June 30, 2009, and again this base period contained only wages credits from her prior primary employer. She continued to receive unemployment insurance benefits, both regular and emergency unemployment compensation (EUC), reduced for wages received in her employment in her new employment with Hy-Vee, through the expiration of the benefit year on December 19, 2010.

Upon expiration of the 2009 claim year, a new claim year was established effective December 19, 2010. Her base period for this current benefit year is July 1, 2009 through June 30, 2010. Beyond the \$93.00 vacation payout from her prior primary employer paid out in the third quarter 2009, her current base period contains only wage credits from her current employer, Hy-Vee, so any eligibility under her new claim year is based upon her wage credits with this employer.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides that a claimant is deemed partially unemployment insurance benefits if she is not employed at her usual hours and wages and earns less than her weekly benefit amount plus \$15.00. Iowa Code § 96.19-38-b.

871 IAC 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.

Since the beginning of the new claim year effective December 19, 2010 the employer has been providing the claimant with substantially the same employment as it provided during her base period. Consequently, the claimant is not eligible to receive partial unemployment insurance benefits based upon those wages upon the filing of her new claim effective December 19, 2010.

DECISION:

The unemployment insurance decision dated April 7, 2011 (reference 01) is affirmed. The claimant is not eligible for unemployment insurance benefits on her December 19, 2010 claim for the period of December 19, 2010 through April 26, 2011.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css