

**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**

**PHYLLIS K GALETICH  
701 E 1ST  
MADRID IA 50156**

**HY-VEE FOOD STORES INC  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283**

**TALX UC EXPRESS  
4100 HUBBELL #78  
DES MOINES IA 50317-4546**

**Appeal Number: 04A-UI-00636-LT  
OC 06-22-03 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, 4th 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 - Able and Available  
Section 96.19-38-a & b – Total and Partial Unemployment  
Section 96.7-2-a(2) – Same Base Period Employment  
871 IAC 24.22(2)f – Part-Time Worker – Able and Available  
Section 96.3-7 - Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from the January 12, 2004, reference 06, decision that allowed benefits effective January 4, 2004. After due notice was issued, a hearing was held on January 28, 2004. Claimant did participate. Employer did participate through Chuck Underhill and Pete Bilden and was represented by David Williams of Talx UC Express. Megan O'Boyle did not participate.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time pharmacy tech working three partial days per week through October 12 when she was in the hospital and had surgery on October 20. The physician released her to return to work on December 1 for two days per week. Claimant did return to work on December 1 according to the terms of her partial release. On January 4, claimant resumed working her regular three partial days per week pursuant to a full release. Claimant later gave her notice to quit effective January 29, 2004 to take another job.

The administrative record reflects that claimant has full time wages in her base period from another employer, Glenn E. Allen Corp. The record further shows benefits paid from the week ending November 22, 2003 through the week ending January 3, 2004 totaling \$1,391.00

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed and the employer is relieved of benefit charges.

Iowa Code Section 96.19-38 provides:

"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, 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.

An individual shall be deemed partially unemployed in any week in which 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) 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.

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.

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.

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.

871 IAC 23.43(4)a provides in part:

(4) Supplemental employment.

a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relieved of benefit charges....

Because the claimant has other base-period wages and is currently employed part time, she is considered partially unemployed. Partial benefits are allowed. Inasmuch as the current part-time employer, Hy-Vee, is offering the same wages and hours as in the base period, no benefit charges shall be made to its account.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be

credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant was working to the full extent of her medical release from December 1, 2003 through January 3, 2004, she was not entitled to benefits, as she was not able to work additional hours and was, therefore, not partially unemployed during that time. During this period, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The January 12, 2004, reference 06, decision is modified in favor of the appellant. The claimant is partially unemployed and benefits are allowed effective January 4, 2004, provided she is otherwise eligible. The account of the current part-time employer shall not be charged (Hy-Vee account number 006858). The claimant is overpaid benefits in the amount of \$1,391.00 for the period from November 16, 2003 through January 3, 2004.

dml/kjf