

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WHITTNEY J LAMB
Claimant

HY-VEE INC
Employer

APPEAL 15A-UI-03512-GT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/15/15
Claimant: Respondent (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a – Same Base Period Employment

STATEMENT OF THE CASE:

The employer filed an appeal from the March 9, 2015, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 15, 2015. Claimant participated. Employer participated through Sabrina Bentler, Hearing Representative. Employer's Exhibit 1 was admitted into evidence.

ISSUES:

Does the claimant meet the definition of being considered partially unemployed?
Is the claimant able to and available for work?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant currently works for Hy-Vee as a part-time checker. From June 6, 2013 through September, 2014, claimant worked part-time as contemplated in the original contract of hire. In October, 2014 claimant requested that her hours be changed because of day care time conflicts. Employer acquiesced to the changes and claimant continued to work under those revised terms through the rest of 2014.

On or about January 12, 2015 claimant was taken off the schedule and did not work for employer at all at through the rest of January, all of February, and all of March, 2015. Claimant was available for work during that period of time. Claimant filed for unemployment benefits on or about February 15, 2015.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed effective February 15, 2015.

Iowa Code § 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".

Iowa Code § 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 § 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 § 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 § 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 § 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 § 85.33, § 85.34, subsection 1, or § 85A.17, or responsible for paying indemnity insurance benefits.

Iowa Admin. Code r. 871-23.43(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 was not employed under the same hours and wages as contemplated and agreed upon by the parties, she is considered partially unemployed. Benefits may be allowed based upon reporting of weekly earnings. For whatever period the employer is not offering the same wages and hours as contemplated in the contract of hire, it may be liable for benefit charges to its account.

Partial benefits based upon payment of gross wages are calculated using the following formula:

Gross wages – 25% of WBA = deduction from benefits rounded down.

For example:

20 hours x \$8.00 per hour = \$160 gross wages
\$280 WBA x .25 = \$70 deduction from benefits
\$160 - \$70 = \$90 deduction from benefits
\$280 - \$90 = \$190 partial benefits for a week with \$160 in gross wages

DECISION:

The March 9, 2015, (reference 01) decision is affirmed. The claimant is partially unemployed and benefits are allowed, provided she is otherwise eligible. Claimant is required to report gross wages earned for each week of benefits claimed. The employer's account (006858-000) may be liable for charges.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/pjs