

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

YVETTE C TAYLOR
Claimant

APPEAL NO. 20A-UI-13981-ED

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 07/12/20
Claimant: Appellant (1R)

Iowa Admin. Code r. 871-24.23(26) – Part-Time Worker – Same Wages and Hours
Iowa Code § 96.4-3 – Able and Available
Iowa Code § 96.7(2)A(2) – Partial Benefits
Iowa Code § 96.19(38) – Total and Partial Unemployment
IAC R. 871-24.23(26)

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated October 27, 2020, reference 02, which held claimant was still employed for the same hours and wages as in her original contract of hire. After due notice, a hearing was scheduled for and held on January 5, 2021. Claimant participated personally. Employer participated by hearing representative Barbara Buss and witnesses Matthew Egger and Billie Joe Hixson.

ISSUES:

Whether claimant is still employed at the same hours and wages?
Whether claimant is eligible to receive partial benefits?
Whether claimant is able and available for work?

FINDINGS OF FACT:

The claimant worked for Hy-Vee, a base period employer, part time under the same terms and conditions as contemplated in the original contract of hire until her separation from employment on July 28, 2020.

Claimant works as a part-time cashier beginning September 23, 2019. Claimant's hours varied. Claimant was not guaranteed a certain number of hours each shift. Claimant separated from her employer on July 28, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially unemployed.

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".

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 either of the following apply:

(1) 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.

(2) 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 Admin. Code r. 871-24.23(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.

Because the claimant has no other base-period wages and continued to work part time until her separation on July 28, 2020, claimant is not considered partially unemployed. Claimant had a

variation in her hours. Claimant did not have guaranteed hours. Employer acted reasonably in scheduling claimant for hours. Benefits are denied.

The issue of whether the claimant's separation qualifies her for benefits is remanded to the Benefits Bureau of IWD for an initial investigation and determination.

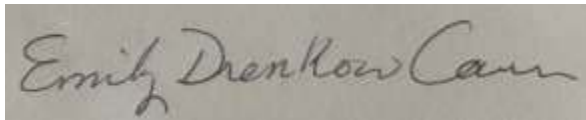
DECISION:

The October 27, 2020, reference 02, unemployment insurance decision is affirmed. The claimant was not partially unemployed and benefits are denied.

REMANDS:

The issue of whether the claimant's separation from employment on July 28, 2020 qualifies her for benefits is remanded to the Benefits Bureau of IWD for an initial investigation and determination.

Note to Claimant: Even though claimant is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.



Emily Drenkow Carr
Administrative Law Judge

January 22, 2021
Decision Dated and Mailed

ed/scn