

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TED J GRIFFITH
Claimant

APPEAL NO. 10A-UI-03402-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

**Original Claim: 01/17/10
Claimant: Respondent (1)**

Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Hy-Vee, Inc. (employer) appealed a representative's February 23, 2010 decision (reference 01) that concluded Ted J. Griffith (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 15, 2010. The claimant participated in the hearing. Roxanne Martinek appeared on the employer's behalf and presented testimony from one other witness, Jason O'Brien. 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.

ISSUE:

Is the claimant employed by the employer for less than his usual hours and wages even though he remains able and available for work, and is he therefore eligible for full or partial unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on April 4, 2009. He works part-time as a night stock clerk in the employer's Cedar Rapids, Iowa store. The claimant typically has worked about two days per week on a 10:00 p.m. to about 6:00 a.m. schedule. There was a period of time from about mid October through mid November where the claimant was only available to work Sundays, but then returned to being available a few days per week. On about January 14, 2010, he inquired of the employer about the number of hours he was getting, as it was still reduced to about one day per week. The claimant established an unemployment insurance benefit year effective January 17, 2010. The high quarter of his base period was the third quarter 2009. His wages from the employer for that quarter were \$1,870.00; his hourly rate during that quarter was \$8.50, so he was averaging 16.9 hours, about two eight-hour shifts, per week.

Since establishing his claim for unemployment insurance benefits, there have been weeks in which the claimant worked only about one full eight-hour shift or even no shifts. There was no

evidence that this was due to the claimant being unavailable to work at least two shifts for those weeks, but rather was simply due to a lack of business need on the part of the employer. There have also been weeks since establishing his claim where the claimant did work two shifts per week, and even one week where he worked three shifts.

REASONING AND CONCLUSIONS OF LAW:

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

There have been weeks since establishing his claim that the employer was not providing the claimant with approximately two eight-hour shifts of work. While this is not a matter of fault on the part of the employer, the claimant is not receiving his normal hours and wages for those weeks; the employer was not providing the claimant with substantially the same employment as it provided during his base period. Consequently, the claimant is qualified to receive partial unemployment insurance benefits for those weeks upon the filing of his claim effective January 17, 2010, provided he was otherwise eligible. To be eligible for benefits for any particular week, the claimant must file a weekly claim for that week reporting his wages from all employers earned (not paid) for that week; the amount of his eligibility will then be determined pursuant to the formula set out by the statute. 871 IAC 24.52(8); Iowa Code § 96.3-3.

Implicit with the concept of allowing benefits for a claimant whose hours with his employer have been reduced is the expectation that he remain available for work on the same basis as when he was previously working and earning the wage credits on which his unemployment insurance benefits are based. Iowa Code § 96.4-3; 871 IAC 24.22(2)(a). While there was a period during which the claimant significantly reduced his availability from that which he held open during his base period, this was for a brief period prior to the establishment of his unemployment insurance claim, and he restored his availability prior to establishing his claim for benefits. In order to retain his eligibility for weeks in which he works less than two full shifts, he must remain available for work during those weeks on the same basis as when he was working during the high quarter of his base period.

DECISION:

The representative's February 23, 2010 decision (reference 01) is affirmed. The claimant is eligible for partial unemployment insurance benefits for weeks after January 17, 2010 for which he is not scheduled to work at least two full shifts per week, for which he remains available to work.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw