

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319**

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**ALLEN D WALKER**

Claimant

and

**HY-VEE INC**

Employer

**HEARING NUMBER: 19BUI-04439**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**NOTICE**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION:** 96.19-38, 96.4-3

**DECISION**

**UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE**

The Claimant appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

**FINDINGS OF FACT:**

The Administrative Law Judge's findings of fact are adopted by the Board as its own.

**REASONING AND CONCLUSIONS OF LAW:**

In this case we have a worker who worked a seasonal job at Nordstrom. He also works other part-time jobs before, during, and after his seasonal work. He seeks benefits between seasons, adjusted for his reported earnings. The Administrative Law Judge found that he was not eligible because he is not unemployed, but we disagree.

We agree with the Administrative Law Judge that the Claimant is not totally unemployed. We differ on the finding that he is not otherwise unemployed.

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Unemployment. There are two types of unemployment that describe this case. They are “partial unemployment” and “Week of part total unemployment.”

As noted by the Administrative Law Judge partial unemployment includes those weeks during which “[t]he 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.” Iowa Code §96.19(38)(b)(2). Unlike the Administrative Law Judge we do not find that the Code limits “regular job” to “regular full time job.” The Code does not say “full-time” and we do not read those words into it. *Irving v. EAB*, 883 N.W.2d 179, 192 (Iowa 2016) (“the Iowa Employment Security Law is to be liberally construed to carry out its humane and beneficial purpose”). Here the Claimant is on seasonal layoff from Nordstrom. He is no less “separated” than if he worked for Nordstrom full time. The work at Hy Vee is supplemental in the sense that the Claimant would be eligible on the Nordstrom credits alone, and in the sense that the seasonal separation is from Nordstrom. We do not see why a Claimant on seasonal layoff from full-time work would be eligible for partial benefits, but a Claimant on seasonal layoff from the part-time job comprising the bulk of his credits would not be. Further we do not see why a Claimant who is on seasonal layoff from a single part-time job would be eligible (because “totally unemployed”), but a Claimant on seasonal layoff from one of several part-time jobs would not be eligible. To be sure, the employers where he still works should be relieved of charges, but this does not mean he is to be denied benefits. By the math he is partially unemployed for those weeks during which he earned less than his weekly benefit amount plus \$15.

Even setting aside partial unemployment we have the regulatory concept of “week of part total unemployment.” In general “part-total benefits are payable to a worker with part-time employment for some other employer, and whose hours of work are less than full-time.” UIPL 39-83, *Model Legislative Language to Implement a Short-Time (Work Sharing) Compensation Program and Recommended Improvements in State Provisions for Partial Unemployment Benefits*, Attachment III; see also *Application of Extended Benefits (EB) Work Test to Weeks of “Partial” and “Part-total” Unemployment*, UIPL 06-92 (When assessing the “work search during a week of ‘part-total unemployment’ [a week in which a claimant otherwise totally unemployed has some earnings], the same ‘work test’ standards that are applied to claims for total unemployment must be used”). Under the regulations of the Department a “week of part total unemployment” is “[a] week of otherwise total unemployment during which an individual has odd jobs or subsidiary work with earnings in excess of the amount specified in the state law as allowable without resulting in a reduction in the individual’s benefit payment.” 871 IAC 24.1(139)(b). Here the state formula allows a worker to earn up to ¼ of the WBA without resulting in a reduction of benefits. The only weeks during which the Claimant did not earn more than the earnings limit, all show him earning more than ¼ of his WBA. We think within the meaning of this code section, earnings at a job which by itself would not be sufficient to qualify the worker for benefits meets the definition of subsidiary work. We thus conclude that this is a case of a weeks that would otherwise be total unemployment but for earnings at subsidiary work. The Claimant thus has experienced weeks of part-total unemployment. We also point out that “Week of unemployment” includes “A week in which an individual performs less than full-time work for any employing unit if the wages payable with respect to such week are less than a specified amount (usually the weekly benefit amount).” 871 IAC 24.1(138). Here the only weeks during which the Claimant would have any benefits due anyway all fit the bill, namely the weeks ending 5/11, 5/18, 6/15 and 8/03. The remaining weeks all show the Claimant earning more than his WBA plus \$15, indeed more than 125% of his WBA. Thus he should receive the appropriate partial benefits for the weeks he earned under his WBA. Such benefits should be calculated as usual whether we call this partial unemployment, part-total unemployment, or just “unemployment” under rule 24.1(138). We note that

whatever it is called, the Claimant will still have to be able to work, available to work, and earnestly and actively seeking work in order to collect benefits.

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Charging of Employer: Next we come to the charging of Hy Vee. The general rule is “that 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.” Iowa Code §96.7(2)(a)(2). This means that for any *benefit week* when Hy Vee is supplying the Claimant the same employment that the Claimant received during the base period then Hy Vee will be relieved of charges. The record establishes that this means all the weeks so far where the Claimant has claimed for benefits, Hy Vee should be relieved of charges for any benefits to be paid.

**DECISION:**

The administrative law judge’s decision dated July 12, 2019 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was an unemployed individual. Accordingly, the Claimant is allowed benefits provided the Claimant is otherwise eligible. For any week during which the Employer supplied the Claimant with the same employment as in his base period the Employer will be relieved of charges.

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Kim D. Schmett

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James M. Strohman

RRA/fnv