

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DEBRA R GROSS
Claimant

HY-VEE INC
Employer

APPEAL NO. 21A-UI-07836-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/17/21
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated March 17, 2021, reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on May 27, 2021. Claimant participated personally and with witness Jason Gross. Employer participated by hearing representative Barbara Buss and witnesses Tara Jo Brown and Jordan Heidebrink. Claimant's Exhibits A-C were admitted into evidence

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 previously worked for Hy-Vee, a base period employer, full time as an Aisles Online manager. Claimant was terminated from that position on January 18, 2021. Claimant and employer discussed claimant being hired to work a different position at a lower hourly rate, but the parties were unable to come to an agreement on the other job.

At all times claimant was able and available to work the hours that she was assigned at her previous job with Aisles online.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially unemployed, but that the claimant was able and available for work.

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.

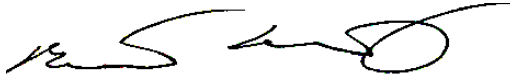
(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

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.

Claimant in this matter remained able and available for work at all times relevant. She was not totally or partially unemployed. Benefits are allowed if claimant is otherwise eligible for benefits.

DECISION:

The March 17, 2021, reference 01, decision is reversed. The claimant is able and available for work and benefits are allowed, provided claimant is otherwise eligible.



Blair A. Bennett
Administrative Law Judge

June 9, 2021
Decision Dated and Mailed

bab/scn