

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TERESA DUMERAUF
Claimant

HY VEE INC
Employer

APPEAL 21A-UI-14263-AD-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/29/20
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Code § 96.1A(37) – Total, partial unemployment
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages
Iowa Code § 96.7(2)a(2) – Charges – Same base period employment

STATEMENT OF THE CASE:

On June 20, 2021, Teresa Dumerauf (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated June 10, 2021 (reference 01) that denied benefits as of November 29, 2020 based on a finding claimant was still employed for the same hours and wages as in the contract of hire.

A telephone hearing was held on August 6, 2021. The parties were properly notified of the hearing. Claimant participated personally. Hy-Vee Inc. (employer/respondent) did not register a number for the hearing or participate.

Claimant's Exhibit 1 was admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the claimant totally, partially, or temporarily unemployed?
- II. Is the claimant able to and available for work?
- III. Is the claimant still employed at the same hours and wages? Is the employer's account subject to charge? Is the claimant an on-call worker?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant began working for employer in the week ending December 19, 2020. Claimant was employed part-time as a stocker. The last day worked there was May 31, 2021. Claimant separated from employer on June 10, 2021. Claimant was able and available for full-time work during her time with employer but full-time work was not offered. There was no guarantee of certain hours in this position.

Claimant began working for another employer, Women's Care Specialist, in May 2021. She continues to be employed there. She is working as work is available in that position. She is able and available for full-time work.

Claimant filed for benefits based on her separation from Kasa Delivery, LLC. She was separated from that employer in the fourth quarter of 2020.

Claimant filed a claim for benefits each week from the benefit week ending December 19, 2020 through the benefit week ending June 5, 2021. Claimant reported wages each week she filed. Claimant's weekly benefit amount plus \$15.00 is \$364.00. She reported wages in excess of \$364.00 in the weeks ending January 30 and February 6, 2021. She reported earning wages less than \$364.00 in each other week filed. Claimant reported her wages earned in each week filed.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the decision dated June 10, 2021 (reference 01) that denied benefits as of November 29, 2020 based on a finding claimant was still employed for the same hours and wages as in the contract of hire is MODIFIED in favor of appellant. Benefits are allowed as set forth below.

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 96.1A(37) 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 Code section 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.

(a) 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 section 96.8, subsection 5.

Iowa Admin. Code r. 871-23.43(4)a provides in part:

(4) Supplemental employment.

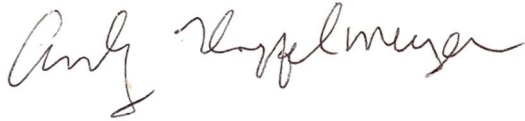
a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that 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....

The administrative law judge finds claimant was partially unemployed and eligible for benefits in each week filed except for the weeks ending January 30 and February 6, 2021. This is because claimant was separated from her employment with Kasa Delivery, LLC, able and available for full-time work, and earning with employer and Women's Care Specialist less than her weekly benefit amount plus \$15.00. Claimant is not eligible in the weeks ending January 30 and February 6, 2021 because she earned more than her weekly benefit amount plus \$15.00 in those weeks.

Employer shall not be charged for benefits paid, as claimant was employed for the same wage and hours as in the original contract of hire during the weeks she filed while attached to employer. For the same reasons neither shall Women's Care Specialist be charged for benefits paid.

DECISION:

The decision dated June 10, 2021 (reference 01) that denied benefits as of November 29, 2020 based on a finding claimant was still employed for the same hours and wages as in the contract of hire is MODIFIED in favor of appellant. Benefits are allowed as set forth above. Employer shall not be charged for benefits paid.



Andrew B. Duffelmeyer
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August 17, 2021

Decision Dated and Mailed

abd/kmj