

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**LAURA A STONEKING**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL 17A-UI-07637-JP-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/18/17**  
**Claimant: Respondent (2)**

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Iowa Code § 96.19(38)b – Partial Unemployment  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment  
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages

**STATEMENT OF THE CASE:**

The employer filed an appeal from the July 20, 2017, (reference 04) unemployment insurance decision that allowed benefits beginning June 18, 2017. The parties were properly notified about the hearing. A telephone hearing was held on August 14, 2017. Claimant did not participate. Employer participated through hearing representative Keith Mokler and store director (Mason City location) Ina Cavin. Official notice was taken of the administrative record, including claimant's benefit payment history, claimant's weekly continued claim filing history, claimant's wage history, and the fact-finding documents, with no objection.

**ISSUES:**

Is the claimant eligible to receive partial benefits?

Is the claimant able to work and available for work?

Is the claimant still employed at the same wage and hours?

Is the employer's account subject to charge?

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant currently works for HY-VEE INC, a base period employer, part-time under the same terms and conditions as contemplated at hire. When claimant was hired, the employer did not guarantee her a set number of hours per week. Part-time employees for the employer are scheduled to work thirty hours a week or less. Since claimant's employment at the Mason City location, she averaged two shifts per week. Five to seven hours per shift is typical for a part-time cashier at the employer. Claimant averaged ten to twelve hours a week. Claimant worked for the employer at both its Mason City and Ankeny locations.

On June 15, 2017, claimant notified the employer she had a medical procedure set for Thursday, June 22, 2017. Claimant requested time off from the employer during the week of the surgery. From the week beginning June 18, 2017 until July 13, 2017, claimant was unable to work for the employer due to her medical procedure. According to the administrative record, claimant was released to return to work on July 13, 2017. Since June 18, 2017, claimant has only worked one shift for the employer. Claimant worked 5.27 hours on July 29, 2017. The employer has had at least two shifts per week available for claimant since June 18, 2017. The employer still has work available for claimant and if she requested hours she would be placed on the schedule. Mr. Mokler testified that claimant has not worked any hours at the Ankeny store since she left due to her medical procedure. Ms. Cavin testified that claimant's pay rate has not changed.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant is not partially unemployed and this part-time employer is relieved of benefit charges.

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 Code section 96.7(2)a(2)(a), (b), and (c) 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.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

Iowa Admin. Code r. 871-24.22(2)f provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

f. Part-time worker, student--other. Part-time worker shall mean any individual who has been in the employ of an employing unit and has established a pattern of part-time regular employment which is subject to the employment security tax, and has accrued wage credits while working in a part-time job. If such part-time worker becomes separated from this employment for no disqualifiable reason, and providing such worker has reasonable expectation of securing other employment for the same number of hours worked, no disqualification shall be imposed under Iowa Code section 96.4(3). In other words, if an individual is available to the same degree and to the same extent as when

the wage credits were accrued, the individual meets the eligibility requirements of the law.

Iowa Admin. Code r. 871-24.23(16) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

Since June 18, 2017, the employer has had at least two shifts per week available for claimant. However, claimant has only worked one shift for the employer since June 18, 2017. The limitation of hours since June 18, 2017 was triggered by claimant's inability to work or unavailability for the available hours. Inasmuch as the current part-time employer is offering the same wages and hours as contemplated at hire and claimant has not made herself available for the hours offered, she is not considered partially unemployed and is considered unavailable for work, and no benefit charges shall be made to this employer's account.

**DECISION:**

The July 20, 2017, (reference 04) unemployment insurance decision is reversed. Claimant is not partially unemployed and benefits are denied effective June 18, 2017.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

jp/rvs