

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HEATHER D PICHARDO SALGADO
Claimant

APPEAL NO: 10A-UI-06020-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 03/07/10

Claimant: Appellant (4)

Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits
Section 96.4-3 – Able and Available
871 IAC 26.14(7) – Late Call

STATEMENT OF THE CASE:

Heather D. Pichardo Salgado (claimant) appealed a representative's April 12, 2010 decision (reference 01) that concluded she was qualified to receive unemployment insurance benefits in conjunction with her employment with Hy-Vee, Inc. (employer). Hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing to be held at 2:00 p.m. on June 9, 2010. The claimant received the hearing notice and responded by calling the Appeals Section on June 1, 2010. She indicated that she would be available at the scheduled time for the hearing at a specified telephone number. However, when the administrative law judge called that number at the scheduled time for the hearing, the claimant was not available; therefore, she did not participate in the hearing. The employer responded to the hearing notice and indicated that Tim Speir would participate as the employer's representative. When the administrative law judge contacted the employer for the hearing, Mr. Speir agreed that the administrative law judge should make a determination based upon a review of the available information. The record was considered closed at 2:10 p.m. At approximately 2:30 p.m., the claimant called the Appeals Section and requested that the record be reopened. Based on a review of the information in the administrative file and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Should the hearing record be reopened? Is the claimant employed by the employer for less than her usual hours and wages even though she remains able and available for work, and is she therefore eligible for full or partial unemployment insurance benefits?

FINDINGS OF FACT:

The claimant received the hearing notice prior to the June 9, 2010 hearing. The instructions inform the parties that they are to be available at the specified time for the hearing, and that if they cannot be reached at the time of the hearing at the number they provided, the judge may decide the case on the basis of other available evidence. The claimant could not be reached at

the time for the hearing because she was at prescheduled, non-emergency doctor's appointments with her children.

The claimant worked part time for the employer. She established an unemployment insurance benefit year effective March 7, 2010 seeking partial unemployment insurance benefits. Her weekly benefit amount was calculated to be \$178.00, so her earnings limit for partial benefits was \$193.00. From that date through March 30 she continued to be scheduled for work on the same basis as she had been working since at least August 2009; however, there were days and weeks during that period in which she was scheduled for work but she did not work because she was not available.

Another representative's decision was issued on April 26, 2010 (reference 02) which concluded that the claimant resigned her employment with the employer on March 30, 2010 because she was accepting employment with another employer. The claimant did not report any wages earned with any employer on her weekly continued claim for the week ending April 3, 2010, so her employment with her new employer could not have begun until at least April 4, 2010. Therefore, the measurement of her availability for work was still as against her availability for work with the employer through April 3, 2010. Beginning the week ending April 10, the claimant was reporting wages, presumably with her new employer. During some weeks since April 4, 2010 those wages have been less than \$193.00.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant's request to reopen the hearing should be granted or denied. After a hearing record has been closed the administrative law judge may not take evidence from a non-participating party but can only reopen the record and issue a new notice of hearing if the non-participating party has demonstrated good cause for the party's failure to participate. 871 IAC 26.14(7)b. The record shall not be reopened if the administrative law judge does not find good cause for the party's late contact. Id. Failing to read or follow the instructions on the notice of hearing are not good cause for reopening the record. 871 IAC 26.14(7)c.

The claimant was not available for the June 9, 2010 hearing until about a half hour after the hearing had been closed. Although the claimant intended to participate in the hearing, the claimant failed to read or follow the hearing notice instructions and did not ensure she was available at the time for the hearing and prior to the hearing did not attempt to reschedule the hearing. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. The reason the claimant was not available at the time for the hearing was not a bona fide emergency. The claimant did not establish good cause to reopen the hearing. Therefore, the claimant's request to reopen the hearing is denied.

The unemployment insurance law provides that a claimant is deemed partial unemployment insurance benefits if she is not employed at her usual hours and wages and earns less than her weekly benefit amount plus \$15.00 in other employment. Iowa Code § 96.19-38-b.

Where a claimant is working less than her normal hours with her employer she must remain available for work on the same basis as when she was previously working and earning the wage credits on which her unemployment insurance benefits are based. Iowa Code § 96.4-3; 871 IAC 24.22(2)(a). During the period of March 7 through April 3, 2010, the reason for the

claimant's lack of hours with the employer were due to her reduced availability for work from that she was normally available. Therefore, for that period benefits are denied.

Beginning April 4, 2010 the claimant's availability is to be measured as with her current employer, although she must also remain generally available for work on the same basis as when she was working during the high quarter of her base period. The high quarter of her base period was the first quarter 2009, when she earned \$3,744.00. Whatever her availability for work was at that time is the level at which she must continue to be available for work with her new employer.

DECISION:

The representative's April 12, 2010 decision (reference 01) is modified in favor of the claimant. The claimant is not eligible for partial unemployment insurance benefits for the period of March 7 through April 4, 2010. As of April 4, 2010, the claimant may be eligible for partial unemployment insurance benefits, provided she is otherwise eligible. However, she must maintain her same level of general availability for work with her new employer as she held with this named employer during her employment in the first quarter of 2009. The employer's account is exempt from charge for benefits paid to the claimant because of the intervening separation decision.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs