

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**ASHLEY M O'LEARY**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL NO. 14A-UI-10752-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/21/14**  
**Claimant: Appellant (5)**

Section 96.4-3 - Able to and Available for Work  
Section 96.19-38-b - Eligibility for Partial Unemployment Insurance Benefits

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated October 14, 2014, reference 01, that concluded the claimant was ineligible to receive partial unemployment insurance benefits. A telephone hearing was held on November 5, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Alice Rose Thatch participated in the hearing on behalf of the employer with a witness, Angela Handling. Exhibit One, a list of the hours and wages since the beginning of her employment, was entered into evidence. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show the claimant was determined disqualified from receiving benefits effective September 27, 2014, due to a separation disqualification. That case is scheduled for an appeal hearing on November 18. If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision.

**ISSUE:**

Is the claimant eligible for partial unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant hired to work part time as a kitchen clerk in April 2014. She was not guaranteed any certain number of hours or days of work. Her hours of work varied from week to week from 20 to 40 hours per week. She received more hours during weeks when she worked extra hours doing catering work.

She requested to be transferred to the wine and spirit department at the end of July 2014 because she was unhappy working in the kitchen. She asked the manager in the wine and spirit department whether she would be able to work the 20 to 30 hours she was working in the

kitchen. The manager said that would be no problem. The claimant worked the following hours after transferring to wine and spirits:

Pay Period	Hours	Wages
August 4 - 10	33.2	\$265.60
August 11 – 17	21.9	\$175.20
August 18 – 24	29.4	\$235.20
August 25 – 31	5	\$40
September 1 – 7	23.2	\$185.60
September 8 – 14	12.2	\$97.60
September 15 – 21	5.7	\$45.60
September 22 – 28	18.3	\$146.40
September 29 – October 5	4.43	\$34.40

During some of the weeks on the table above, the claimant had more scheduled hours but she was experiencing health problems and was absent from work.

The claimant filed a new claim for unemployment insurance benefits with an effective date of September 21, 2014. Her weekly benefit amount was determined to be \$95.

During the week of September 29, the claimant only worked one day on October 2. This was because the previous week, the employer had decided to discharge the claimant but not informed her yet because the manager was out of town. The claimant was discharged on October 2, 2014.

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

The issue in this case is whether the claimant was eligible for partial unemployment insurance benefits effective September 21, 2014.

Iowa Code § 96.3-3 provides:

3. Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.19, subsection 38, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

Iowa Code § 96.19-38-b provides in part:

b. An individual shall be deemed partially unemployed in any week in which, 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.

The unemployment insurance rules provide that a claimant who is still employed in a part-time job at the same hours and wages as the contract of hire and is not working a reduced workweek different from the contract of hire is not considered partially unemployed.

Since the claimant applied for unemployment insurance benefits effective September 21 and she was discharged October 2, this case only involves two weeks—the week ending September 27 and the week ending October 4.

The claimant was not eligible for partial unemployment insurance benefits for the week ending September 27 because her earnings were over her earnings limit of \$110. In addition, since the claimant worked 18.3 hours that was not substantially different from her usual hours of work.

Since the claimant only worked one day during the week ending October 4 and was discharged during that week, her eligibility for benefits for that week depends on the outcome of the separation appeal hearing scheduled on November 18. If the decision is that she is qualified to receive unemployment insurance benefits based on her discharge, she would be qualified for benefits reduced by the \$34.40 in wages she had for the week. On the other hand, if she is disqualified, she would not be eligible for benefits due to the disqualification decision.

**DECISION:**

The unemployment insurance decision dated October 14, 2014, reference 01, is modified with no change in the outcome. The claimant is not eligible for partial unemployment insurance benefits for the week ending September 27. Her eligibility for benefits for the week ending October 4 depends on the outcome of the separation hearing on November 18.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs