

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHELLY L WALTON
Claimant

APPEAL NO. 11A-UI-09258-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

**OC: 05/29/11
Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Quit
871 IAC 24.27 – Quit From Part-Time Employment
Section 96.4-3 – Eligibility for Benefits

STATEMENT OF THE CASE:

Shelly L. Walton filed a timely appeal from an unemployment insurance decision dated July 1, 2011, reference 03, that denied benefits to her. After due notice was issued, a telephone hearing was held August 12, 2011 with Ms. Walton participating. Store Director Jim Merulla testified for the employer, Hy-Vee, Inc. John Fiorelli, Attorney at Law, of Corporate Cost Control, Inc., represented the employer.

ISSUES:

Is the claimant eligible for unemployment insurance benefits from May 29 through July 8, 2011?
Is the claimant's separation from employment on July 8, 2011 a disqualifying event?

FINDINGS OF FACT:

Shelly L. Walton was employed part time by Hy-Vee, Inc. from April 18, 2011 until she resigned July 8, 2011. She was hired as a seasonal worker for the garden center. That job was scheduled to end on June 30, 2011. Store Director Jim Merulla knew that Ms. Walton had lost full-time employment shortly before she began working for Hy-Vee. He offered to keep her on payroll after June 30, 2011 to fill in hours that the regular store employees could not fill. Ms. Walton initially agreed. However, on July 8, 2011, she saw that she was scheduled for a single five-hour shift over the next two weeks. She resigned because it would not be economically advantageous for her to continue working under those circumstances.

Ms. Walton opened a benefit year during the week of May 29, 2011. She reported her weekly earnings from Hy-Vee. These earnings were less than her unemployment insurance weekly benefit amount which had been computed on her prior full-time employment. Hy-Vee is not a base period employer on this claim.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether Ms. Walton is eligible to receive unemployment insurance benefits from May 29, 2011 through July 8, 2011.

Iowa Code § 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".

An individual can be considered to be partially unemployed if the individual is working less than the individual's less regular number of hours and is earning less than the sum of the individual's weekly benefit amount plus \$15.00. See Iowa Code § 96.19-38-b. The evidence establishes that Ms. Walton's benefits are based on prior full-time employment and that she was working only part-time hours for Hy-Vee. The administrative law judge concludes that the claimant meets the definition of partial unemployment because her Hy-Vee hours and earnings were substantially less than her hours and earnings in her base period. Benefits are allowed. These benefits shall not be charged to the account of Hy-Vee since it is not a base period employer.

An individual who resigns from employment without good cause attributable to the employer is ordinarily disqualified for benefits. See Iowa Code § 96.5-1. However, special rules apply for individuals who resign from part-time employment but who are still monetarily eligible for benefits even when the part-time wages are not included. See 871 IAC 24.27.

The evidence here shows that Ms. Walton had initially agreed to remain employed by Hy-Vee past June 30, 2011 even knowing that the company could not guarantee any particular number of hours of work. Her subsequent resignation may have been for good personal cause but was not cause attributable to Hy-Vee. Thus, it shall not be charged with benefits following the claimant's resignation. Ms. Walton, nevertheless, remains eligible to receive benefits based upon her base period wages for her present benefit year.

Before Ms. Walton may use her Hy-Vee wages for computing benefits in future years she must first earn and be paid insured wages equaling ten times her weekly benefit amount with subsequent employers.

DECISION:

The unemployment insurance decision dated July 1, 2011, reference 03, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible. No benefits shall be charged to the account of Hy-Vee.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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