

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

KRISTI N SMITH
Claimant

APPEAL NO. 19A-UI-02371-S1-T

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

CYHAWK HOSPITALITY INC
Employer

OC: 02/17/19
Claimant: Appellant (2R)

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Kristi Smith (claimant) appealed a representative's March 14, 2019, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was still employed with CyHawk Hospitality (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 4, 2019. The claimant participated personally. The employer participated by Julie Keane, Director of Human Resources.

ISSUE:

The issue is whether the claimant is able and available for work. .

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 7, 2018, as a full-time service lead. She worked thirty to forty hours per week and was paid \$13.50 per hour. On February 25, 2019, the employer demoted the claimant to server. Her hourly wage became \$4.35 plus tips.

She filed her claim for unemployment insurance benefits with an effective date of February 17, 2019. The employer did not give her any hours the week ending February 23, 2019, except for one four-hour shift for which she called in sick. For the week ending February 23, 2019, the claimant reported she earned no wages.

For the week ending March 2, 2019, the claimant reported she earned \$43.00 in wages and tips after being scheduled to work eight hours. For the week ending March 9, 2019, the claimant reported she earned \$164.00 in wages and tips after being scheduled to work six hours. For the week ending March 16, 2019, the claimant reported she earned \$137.00 in wages and tips after being scheduled to work six hours. For the week ending March 30, 2019, the claimant reported she earned \$96.00 in wages and tips after being scheduled to work three hours. For the five-week period ending March 30, 2019, the claimant was at all times able and available for work except for the one day she called in sick. The claimant was separated from employment on March 29, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was able and available for work for the five-week period ending March 30, 2019.

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".

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). The claimant was hired as a full-time worker. The employer and claimant agreed that the claimant's hours were reduced by the employer. The claimant was able and available for work for the five-week period ending March 30, 2019.

The issue of the claimant's separation from employment is remanded for determination.

DECISION:

The representative's March 14, 2019, decision (reference 01) is reversed. The claimant was able and available for work for the five-week period ending March 30, 2019. Benefits are allowed, provided the claimant is otherwise eligible.

The issue of the claimant's separation from employment is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs