

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**SHAWNITA C AMERISON**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL 24A-UI-00156-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/25/23  
Claimant: Appellant (1R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.1A(37) – Total, Partial, and Temporary Unemployment

**STATEMENT OF THE CASE:**

On January 4, 2024, claimant Shawnita C. Amerison filed an appeal from the December 29, 2023 (reference 08) unemployment insurance decision that denied benefits effective December 10, 2023, determining claimant was still employed at the same hours and wages as contemplated at her time of hiring. The Unemployment Insurance Appeals Bureau mailed notice of the hearing on January 8, 2024. Administrative Law Judge Elizabeth A. Johnson held a telephonic hearing at 2:00 p.m. on Tuesday, January 23, 2024. Appeal numbers 24A-UI-00156-LJ-T and 24A-UI-00157-LJ-T were heard together and created one record. Claimant Shawnita C. Amerison personally participated. Employer Hy-Vee Inc. participated through witness Steven Almonroce, District HR Manager; and was represented by Marlene Sartin with Corporate Cost Control Inc. Claimant's Exhibit A was received and admitted into the record without objection. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Is the claimant able to work and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant began working for the employer on August 9, 2023. She was hired as a part-time cashier and worked part-time hours throughout her employment. Claimant's employment with Hy-Vee Inc. ended on December 5, 2023.

Claimant last reported to work on December 5, 2023. She was then scheduled to work the following three days, but she called in sick all three days. At the time, claimant had an infection in her hand that prevented her from working. Riley called claimant to check on her. During that conversation, Riley told claimant that she would need to provide the employer with a doctor's note to excuse her absences. Claimant was scheduled for several shifts the following week, December 10 through December 16. However, she provided the employer with a doctor's note

stating she was excused from work through December 15. (Claimant Exhibit A) The doctor's note allowed claimant to return to work on December 16. (Claimant Exhibit A)

Claimant was scheduled to work on December 18; December 21; and December 22. She did not report to work for any of those three shifts, and she did not call in to report her absences. Based on claimant's three consecutive no-call/no-show absences, the employer ended claimant's employment. Claimant was not physically able to work the week of December 17, due to the flu and possible COVID. She remained ill until the week of December 24, 2023.

Claimant reopened her unemployment insurance claim with an additional claim date of December 10, 2023. She filed weekly continued claims for benefits for the weeks ending December 16; and December 23, 2023. Claimant continued filing for benefits each consecutive week, most recently for the week ending January 20, 2024 (as of the week of the hearing).

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

For the reasons that follow, the administrative law judge concludes claimant is not available for work.

Iowa Code section 96.4(3) states: "An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that [the] individual is able to work, is available for work, and is earnestly and actively seeking work..."

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 96.1A, subsection 37", paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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 § 96.1A(37) 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 Admin. Code r. 871-24.23 provides in relevant subparts:

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.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.1A(37) In order to be partially unemployed, an individual must be laid off from full-time employment or working less than his or her regular full-time work week. *Id.* If an individual is employed in a part-time position working the same hours and wages as contemplated at hire, she cannot be considered partially unemployed. Iowa Admin. Code r. 871-24.23(26).

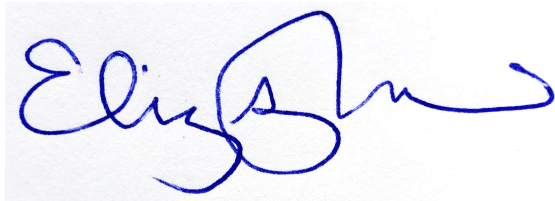
Here, the claimant was scheduled for part-time hours the weeks of December 10, 2023 and December 17, 2023. The employer had part-time hours available for claimant that were consistent with the hours guaranteed or assured at the time of hire. Claimant's inability to work the hours was due to personal illness or injury, not due to any fault of the employer. Even if claimant was not able to work the hours due to personal illness, she still had an employment relationship for the weeks of December 10 and December 17. The administrative law judge finds that claimant was still employed at the same hours and wages as contemplated at the time of hire. She is not able to and available for work, and benefits must be withheld.

This matter will be remanded so Iowa Workforce Development may hold a fact-finding interview and determine claimant's eligibility for benefits based on her separation from employment.

**DECISION:**

The December 29, 2023 (reference 08) unemployment insurance decision is affirmed. Claimant is not able to work effective December 10, 2023, as she is still employed at the same hours and wages as contemplated at hiring. Benefits are withheld for the two weeks ending December 23, 2023.

**REMAND:** The Benefits Bureau shall hold a fact-finding interview and issue a decision determining whether claimant is eligible for benefits based on her separation from Hy-Vee Inc.



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Elizabeth A. Johnson  
Administrative Law Judge

January 29, 2024  
Decision Dated and Mailed

lj/rvs

**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.