

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ALYSIA M SWEET
Claimant

HY-VEE INC
Employer

APPEAL 16A-UI-04968-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/27/16
Claimant: Appellant (2)

Section 96.4-3 – Able and Available
871 IAC 24.23(26) – Same Hours and Wages

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 20, 2016 (reference 02) unemployment insurance decision that concluded the claimant was ineligible to receive partial unemployment insurance benefits since her hours and/or wages had not been reduced. The parties were properly notified about the hearing. A telephone hearing was held on May 17, 2016. The claimant participated personally. The employer participated through Sabrina Bentler with Corporate Cost Control. Scott Foster, Store Manager, and Gina Pelc, Assistant Store Manager, testified for the employer. Kristin Brewer attended the hearing but did not testify. Claimant's Exhibit A and Employer's Exhibit One was admitted into evidence. The administrative law judge took official notice of the administrative record, including fact-finding documents. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant eligible for partial unemployment insurance benefits?

Was the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed part time as a delivery driver and was separated from employment on March 29, 2016, when she voluntarily quit the employment. Continuing work was available at the same hours and wages for which she was working at the time of separation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not employed at the same hours and wages for which she was hired.

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".

Iowa Admin. Code r. 871-24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(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.

In this case, the claimant is not still employed at the same hours and wages as she was hired, as she has separated from employment effective March 29, 2016. Accordingly, benefits are allowed for this reason, *provided the claimant is otherwise eligible*. (See Appeal No. 16A-UI-04683-JC-T, with regard to separation and overpayment.)

DECISION:

The April 20, 2016 (reference 02) decision is reversed. The claimant is not still employed at the same hours and wages as she was hired. Benefits are allowed, *provided the claimant is otherwise eligible*. (See Appeal No. 16A-UI-04683-JC-T, with regard to separation and overpayment.)

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/can