

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBRA BOYD
Claimant

APPEAL NO: 14A-UI-04656-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 03/09/14
Claimant: Appellant (1)

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 15, 2014, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 30, 2014. The claimant participated in the hearing. Jeff Mallory, Manager of Store Perishables and Ajah Anderson, Employer Representative, participated in the hearing on behalf of the employer.

ISSUE:

The issues are whether the claimant is able and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired as a part-time cashier for Hy-Vee September 4, 2013, and continues to be employed in that capacity. She agrees she was never guaranteed a certain number of hours. At the time of hire the claimant's availability was Monday, 9:30 a.m. to 8:00 p.m.; Tuesday, 10:00 a.m. to 8:00 p.m.; Wednesday, 9:30 a.m. to 8:00 p.m.; Thursday, 10:00 a.m. to 8:00 p.m.; Friday, 6:00 a.m. to 11:00 p.m.; Saturday, 1:00 p.m. to 8:00 p.m.; and Sunday, 6:00 a.m. to 11:00 p.m. In October 2013, the claimant worked 66.25 hours; in November 2013, she worked 59.97 hours; and in December 2013, she worked 56.28 hours.

On January 13, 2014, the claimant signed two additional availability forms. She was a full-time student and her schedule changed in January 2014. She made an error on the first availability form she completed January 13, 2014, and so she submitted a second form stating she was not available Fridays, Saturdays or Sundays, but could work Tuesdays and Thursdays from 10:00 a.m. to 3:00 p.m. She stated at the bottom of the form that her preferred number of hours were 12 to 20 hours per week. She had classes Monday through Friday and babysat her grandchildren on weekends and sometimes during the week.

On April 8, 2014, she changed her availability form again stating she was unavailable Fridays, Saturdays or Sundays, but could work Mondays from 1:00 p.m. to 5:00 p.m.; Tuesdays from 10:00 a.m. to 5:00 p.m.; Wednesdays from 1:00 p.m. to 5:00 p.m.; and Thursdays from 10:00 a.m. to 5:00 p.m.

After changing her availability in January 2014, the claimant worked 38.73 hours in January 2014; 30.57 hours in February 2014; 15.95 in March and April 2014.

The claimant called in to report she was unable to work or trade a shift with another employee October 9 and 11, November 22, 25 and 29, December 6, 10, 20, 2013, January 21, 23, 24 and 31, March 12 and 19, and April 23 and 24, 2014, for a total of eight absences, two of which were on Fridays when the claimant had asked not to be scheduled due to her classes.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is still employed at the same hours and wages as contemplated in the original contract of hire.

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.

The claimant was hired as a part-time cashier and never guaranteed she would receive a certain number of hours. There has been no separation from her part-time employment and the claimant is currently working for this employer at the same part-time hours and wages as contemplated in the original contract of hire. Her hours have decreased but the claimant initiated the change in her number of hours by limiting the number of hours she is available to work. Due to being a full-time student and caring for her grandchildren on weekends, the claimant has limited the hours she is available for work rather than the employer doing so. Consequently, the administrative law judge must conclude the claimant is not eligible for benefits.

DECISION:

The April 15, 2014, reference 01, decision is affirmed. The claimant is still employed at the same hours and wages as in her original contract of hire and therefore is not qualified for benefits based on her part-time employment.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs