

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**JACOB D ALEER  
1300 – 34<sup>TH</sup> ST #21  
DES MOINES IA 50311**

**HY-VEE INC  
c/o TALX UCM SERVICES INC  
P O BOX 283  
ST LOUIS MO 63166-0283**

**TALX UC EXPRESS  
4100 HUBBEL #78  
DES MOINES IA 50317-4546**

**Appeal Number: 04A-UI-02293-B4T  
OC: 01-18-04 R: 02  
Claimant: Appellant (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4-3 – Eligibility for Benefits

STATEMENT OF THE CASE:

Jacob D. Aleer appealed from an unemployment insurance decision dated March 1, 2004, reference 02, that held, in effect, the claimant was still employed in his same job under the same terms and conditions as the original contract of hire and cannot be considered partially unemployed. Unemployment insurance benefits were denied effective January 26, 2004.

A telephone conference hearing was scheduled and held on March 22, 2004, pursuant to due notice. Jacob D. Aleer responded by providing a telephone number where he could be contacted at the time of the scheduled hearing. The claimant was not available and did not participate in the hearing held.

David Williams, employer representative with TALX UC eXpress, participated on behalf of Hy-Vee, Inc. Peter Streit, Manager, participated on behalf of the employer as a witness.

#### FINDINGS OF FACT:

The administrative law judge, having examined the entire record in this matter, finds that: Jacob D. Aleer was employed as a courtesy clerk at Hy-Vee, Inc. in West Des Moines, Iowa on August 13, 2001. The claimant was hired as a part-time employee on the third shift, working from 10:00 p.m. to 6:00 a.m. each day. The claimant's wages were \$9.00 an hour.

A part-time employee is not guaranteed any hours of employment by Hy-Vee, Inc. The claimant was working approximately 30 hours per week until September 22, 2003, when he requested that his availability be changed. The claimant was then attending college and indicated he could only work five of the seven days for which he was previously available. The claimant was warned at the time that the work hours might be decreased because he was limiting his availability. The claimant again held a conversation with Peter Streit and indicated that he needed to limit his availability before to Mondays, Wednesdays and Fridays.

The claimant remains in his employment with Hy-Vee, Inc. under the same terms and conditions as he negotiated, which limited his availability for work as a part-time employee.

#### REASONING AND CONCLUSIONS OF LAW:

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".

871 IAC 24.23(16), (5), (26) provides:

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.

(5) Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment except if the students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law.

(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 evidence in the record clearly establishes that the claimant was hired as a part-time employee with Hy-Vee, Inc. in West Des Moines and was available for work for the third shift, from 10:00 p.m. to 6:00 a.m. each day.

On September 22, 2003 the claimant limited his availability from seven days a week to five of seven days because he was attending a college. Later the claimant further limited his availability to Monday, Wednesday and Friday because of his college classes.

Work was available to the claimant under the same terms and conditions as he was originally hired had the claimant not limited his availability because of attending school.

The administrative law judge concludes that Jacob D. Aleer is still employed in his part-time job with Hy-Vee, Inc. at the same hours and wages as he negotiated during the last portion of his tenure of employment. The claimant has reduced his workweek availability and cannot be considered partially unemployed.

The administrative law judge concludes that Jacob D. Aleer is not available for work within the intent and meaning of Iowa Code Section 96.4-3 and the foregoing sections of the Iowa Administrative Code.

**DECISION:**

The unemployment insurance decision dated March 1, 2004, reference 02, is affirmed. Jacob D. Aleer is not eligible to receive unemployment insurance benefits because he is still employed under the same terms and conditions as he had negotiated following his original hire. Benefits are denied effective January 26, 2004.

b/b