

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN D MILLER
Claimant

APPEAL NO. 10A-UI-06802-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 04/04/10
Claimant: Appellant (1)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Brian Miller filed an appeal from a representative's decision dated May 3, 2010, reference 02, which denied benefits effective April 4, 2010 on a finding that he was still employed by Hy-Vee, Inc. under the same terms and conditions as hired. After due notice was issued, a hearing was held by telephone on June 21, 2010. Mr. Miller participated personally and Exhibit A was admitted on his behalf. The employer participated by Nancy Richardson, Human Resources Manager, and was represented by Tim Speir of Unemployment Insurance Services.

ISSUE:

At issue in this matter is whether Mr. Miller has satisfied the availability requirements of the law since filing his claim for job insurance benefits effective April 4, 2010.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Miller has been employed by Hy-Vee, Inc. since July 15, 2008. He was hired to work from 24 to 40 hours each week as a night stocker. On October 20, 2008, he became a day stocker and had hours of 4:00 to 10:00 p.m. on Tuesday, Wednesday, and Friday. He was off work for a period of time in August of 2009 due to surgery. When he returned to work on August 21, he was only able to work one or two days each week. By the end of September, he was able to work 20 hours each week. The employer scheduled him to work from 10 to 15 hours per week at that time.

On October 26, 2009, Mr. Miller indicated he was available to work from 4:00 until 10:00 p.m. on Monday and Tuesday. He was scheduled to work these hours on November 17, 18, 19, and 20, but did not work. On November 23, he provided the employer another written statement regarding the times he was available to work. He again indicated he was available to work Monday and Tuesday from 4:00 until 10:00 p.m. He indicated the above availability because he believed he would be getting a second job. He worked a few hours on November 23 but did not work the hours the employer scheduled him to work the remainder of the week. When he did not get the second job, Mr. Miller gave Hy-Vee, Inc. a new statement of availability indicating he could work from 10:00 a.m. until 3:00 p.m., Monday through Friday.

Mr. Miller worked no more than one shift per week starting in approximately December of 2009. He was told there were not as many hours available to give. He filed a claim for job insurance benefits effective April 4, 2010. At that point, he was only being scheduled for one or two days each week. There have been some weeks in which he has not been scheduled for any hours, such as the week ending May 1, 2010. He has not always worked when scheduled to work.

REASONING AND CONCLUSIONS OF LAW:

In order to receive job insurance benefits, an individual must be available for work as that term is defined by law. Iowa Code section 96.4(3). Mr. Miller filed a claim for job insurance benefits because he was not getting as many hours of work as he had received in the past. The employer attempted to schedule Mr. Miller within the hours he chose. However, he did not report for work on some occasions even though the employer scheduled him during times he chose. For example, he did not work November 17, 18, 19, or 20 even though some of the days were of his own choosing. Nor did he work the hours he chose during the week ending November 28. He also failed to work some of the dates he was scheduled to work in May of 2010.

The administrative law judge is not inclined to conclude that the employer reduced Mr. Miller's workweek when it was he who did not work all hours he was scheduled to work. It was unreasonable to expect the employer to continue to schedule him for hours he might not show up to work. Where an individual limits his availability to his regular employer, he cannot expect that the employer will always be able to find a full schedule for him within his limited availability. Because of his limited availability and his failure to work all hours his regular employer had scheduled for him, the administrative law judge concludes that Mr. Miller was not available for work within the meaning of the law. Accordingly, benefits are denied effective April 4, 2010.

DECISION:

The representative's decision dated May 3, 2010, reference 02, is hereby affirmed. Benefits are denied to Mr. Miller effective April 4, 2010, as he was not available for work within the meaning of the law.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw