

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**ASHLEY N ANTHONY**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL 20A-UI-09312-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/29/20**  
**Claimant: Appellant (4)**

Iowa Code section 96.4(3) – Eligibility – Able to and Available for Work

**STATEMENT OF THE CASE:**

On July 31, 2020, Ashley Anthony (claimant/appellant) filed an appeal from the July 21, 2020 (reference 01) unemployment insurance decision that denied benefits as of March 29, 2020 based on a finding claimant was not available for work.

A telephone hearing was held on September 21, 2020. The parties were properly notified of the hearing. The claimant participated personally. Hy-Vee Inc (employer/respondent) did not register a number for the hearing and did not participate.

Official notice was taken of the administrative record.

**ISSUES:**

Is 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:

Claimant began working for employer in May 2015. Claimant was employed as a PRN or as-needed pharmacy clerk. Claimant was not guaranteed any hours in this position, nor was she under any requirement to accept offered hours. The last day claimant worked on the job was in late March 2020. The reason claimant has not worked since that time is because hours have not been offered for some time and because claimant was not available to work due to having to care for her children. Claimant had to care for her children because schools closed due to the pandemic and childcare was unavailable. Claimant has not worked for any other employer since last performing work for employer.

Claimant recently resigned from employer, as she learned the store was closing. Claimant's children returned to school on August 27, 2020. Claimant has been available for work since that time, as she no longer has to care for her children during the day.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the July 21, 2020 (reference 01) unemployment insurance decision that denied benefits as of March 29, 2020 based on a finding claimant was not available for work is MODIFIED in favor of appellant.

Claimant was not available for work and therefore not eligible for benefits from March 29, 2020 and continuing through the benefit week ending August 29, 2020. Claimant is available for work and eligible for benefits beginning with the benefit week ending September 5, 2020, provided she is otherwise eligible.

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".

Iowa Admin. Code r. 871-24.22(2)i(1) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

i. On-call workers.

(1) Substitute workers (i.e., post office clerks, railroad extra board workers), who hold themselves available for one employer and who do not accept other work, are not available for work within the meaning of the law and are not eligible for benefits.

Claimant was not available for work and therefore not eligible for benefits from March 29, 2020 and continuing through the benefit week ending August 29, 2020. This is because claimant was only available in an on-call status and was unavailable for work during normal business hours because she was providing care for her children during the day. While there may have been fewer hours available to claimant in recent months than in prior months, that is the nature of on-call employment: work is offered when it is available, and the employee is free to accept or reject offered work.

Claimant is available for work and eligible for benefits beginning with the benefit week ending September 5, 2020, provided she is otherwise eligible. This is because claimant is no longer making herself only available for on-call work and because she no longer has to provide care for her children during normal business hours.

**While this decision denies regular, state benefits, the evidence indicates claimant may be eligible for federal Pandemic Unemployment Assistance (PUA). Further information on PUA, including how to apply, is set forth below.**

**DECISION:**

The July 21, 2020 (reference 01) unemployment insurance decision that denied benefits as of March 29, 2020 based on a finding claimant was not available for work is MODIFIED in favor of appellant.

Claimant was not available for work and therefore not eligible for benefits from March 29, 2020 and continuing through the benefit week ending August 29, 2020. Claimant is available for work and eligible for benefits beginning with the benefit week ending September 5, 2020, provided she is otherwise eligible.



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Andrew B. Duffelmeyer  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 478-3528

September 23, 2020  
Decision Dated and Mailed

abd/sam

***Note to Claimant:***

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.