

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHERINE A WEBSTER
Claimant

APPEAL NO. 11A-UI-08923-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 12/05/10
Claimant: Appellant (4)

Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated July 5, 2011, reference 07, that concluded she was unavailable for work effective May 22, 2011. A telephone hearing was held on July 28, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Alice Rose Thatch participated in the hearing on behalf of the employer with a witness, Buffy Bosch. Exhibit A was admitted into evidence at the hearing.

ISSUE:

Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant worked part time about 12 to 16 hours per week as a product demonstrator for the employer from September 30, 2010, to April 8, 2011.

After April 8, 2011, the claimant was committed and hospitalized for chronic substance abuse. On April 12, 2011, the claimant contacted the employer's human resources manager, Buffy Bosch, and asked to be taken off the schedule until she got her problems under control. Manager Bosch granted the request and told the claimant to contact her when she was able to return to work. The claimant was on a leave of absence from the employer.

The claimant reapplied for unemployment benefits effective May 22, 2011. At the point that she applied she had not offered to return to work for the employer. She still was trying to get her personal problems resolved and was looking for full-time work.

On June 17, 2011, the claimant called Bosch about returning to work. At the point that the claimant contacted Bosch, she was able to and available for work. At the point that the claimant contacted Bosch, the schedule for the week of June 20 had already been prepared. Bosch was going to prepare the schedule for June 27 on June 20 so she told the claimant to call her on June 20 with the details of when she was available to work.

The claimant failed to contact Bosch on June 20. She came into the store on June 21 and spoke to Bosch. Bosch already had the schedule for June 27 prepared but the claimant was not on it because she did not follow Bosch's instruction. Bosch told the claimant that if she wanted to be put on the schedule for the week of July 4, she would need to contact her on June 27.

The claimant contacted Bosch on June 27 and arranged to go back to work for the employer starting July 5, which she did.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3. The unemployment insurance rules provide:

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits. 871 IAC 24.22(2)j.

The claimant was on a leave of absence and ineligible for benefits until she offered to return to work on June 17, 2011. As of June 17, the claimant demonstrated that she was able to work and available for work. The fact that the employer could not get her on the schedule until July 5, 2011, does not change this. Since availability is decided on a majority-of-the-week basis, the claimant is qualified to receive benefits effective June 19, 2011, provided she is otherwise eligible.

The employer is not a base-period employer on this claim and is not chargeable for benefits paid to the claimant. If the employer becomes a base-period employer in the future, charges will depend on the claimant's employment situation at that time.

DECISION:

The unemployment insurance decision dated July 5, 2011, reference 07, is modified in favor of the claimant. The claimant is denied benefits from May 22 to June 18, 2011. She is qualified for benefits effective June 19, 2011, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs