

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHASITY S LONGSTREET**  
Claimant

**APPEAL NO. 10A-UI-12044-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**Original Claim: 07/18/10  
Claimant: Appellant (1)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from a representative's decision dated August 24, 2010, reference 01, which held the claimant not eligible to receive unemployment insurance benefits, finding the claimant was still employed for the same hours and wages as in the original contract of hire and therefore could not be considered to be partially unemployed, and denied benefits effective July 18, 2010. After due notice was issued, a telephone hearing was held on October 13, 2010. The claimant participated personally. The employer participated by Jeff Carter, store director.

**ISSUE:**

At issue is whether the claimant is employed at the same hours and wages as in the original contract of hire.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Chasity Longstreet began employment with Hy-Vee, Inc. on August 21, 2009. Ms. Longstreet was hired to work as a part-time cashier, working approximately 30 to 32 hours per week. Ms. Longstreet is paid by the hour. The claimant continues to be employed as a part-time cashier working 30 to 32 hours per week at the same rate of pay at the time of hearing.

At the time of hire, Ms. Longstreet was informed that as a part-time employee, there was no guarantee as to the minimum number of hours that she might be assigned to work each week. The claimant, however, was initially assigned to work approximately 30 to 32 hours per week and continued to be employed 30 to 32 hours per week after returning from maternity leave.

Upon reopening her claim for benefits with a claim date of July 18, 2010, Ms. Longstreet was no longer eligible to receive partial unemployment insurance benefits based upon previous employment in her base period.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is employed at the same hours and wages agreed upon in the original agreement of hire and therefore is not eligible to receive partial unemployment insurance benefits.

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(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 evidence in the record establishes that Ms. Longstreet was hired to work at Hy-Vee as a part-time worker. Although there was no guarantee as to the minimum number of hours each week, the claimant was initially assigned to work approximately 30 hours per week and was paid by the hour. After returning from maternity leave, Ms. Longstreet opened a new claim for unemployment insurance benefits. Ms. Longstreet returned to employment with Hy-Vee and once again was assigned to work 30 to 32 hours per week at the same rate of pay. The administrative law judge concludes that there was no change in the original agreement of hire for part-time employment. Since the claimant is still employed for the same hours and wages as in the original contract of hire, Ms. Longstreet cannot be considered to be partially unemployed within the meaning of the law. The claimant is not eligible to receive partial unemployment insurance benefits based upon other employment in a previous base period.

#### **DECISION:**

The representative's decision dated August 24, 2010, reference 01, is affirmed. The claimant is still employed at the same hours and wages as in the original contract of hire and thus is ineligible to receive partial unemployment insurance benefits.

---

Terence P. Nice  
Administrative Law Judge

---

Decision Dated and Mailed

kjw/kjw