

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEANNA G LIMKE

Claimant

APPEAL NO. 09A-UI-18910-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC

Employer

OC: 11/08/09

Claimant: Respondent (4)

Section 96.4(3) – Able and Available
Section 96.7(2)a(2) – Relief of Charges

STATEMENT OF THE CASE:

The employer, Hy-Vee, filed an appeal from a decision dated December 8, 2009, reference 03. The decision allowed benefits to the claimant, Deanna Limke. After due notice was issued a hearing was held by telephone conference call on January 28, 2010. The claimant provided a telephone number to the Appeals Section. That number was dialed at 11:02 a.m. and the only response was a voice mail. A message was left indicating the hearing would proceed without the claimant's participation unless she contacted the Appeals Section at the toll-free number prior to the close of the record. By the time the record was closed at 11:11 a.m. the claimant had not responded to the message and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. The employer participated by Human Resources Manager Tom Noll and Delicatessen Manager Dolly Mealey.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

Deanne was employed by Hy-Vee beginning September 28, 2008 as a part-time deli worker. She has always been on part-time status and worked an average of 10 hours per week. The employer made at least two adjustments to her scheduled work hours at her request, lowering the number of hours she would be scheduled to accommodate her other employment.

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".

Iowa Code section 96.7-2-a(2) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

The claimant is able and available for her regular work hours with this employer. Hy-Vee is a base-period employer and she remains in the same status as during her base period. The employer shall be relieved of charges.

DECISION:

The representative's decision of December 8, 2009, reference 03, is modified in favor of the appellant. Deanna Limke is qualified for benefits, provided she is otherwise eligible. The account of Hy-Vee shall not be charged with benefits paid to the claimant.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs