

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RANDALL J SCHEEL
Claimant

HY VEE INC
Employer

APPEAL 21A-UI-07188-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (1R)

Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications
Iowa Code § 96.19(38) – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

Randall Scheel (claimant) appealed an Iowa Workforce Development March 5, 2021, decision (reference 02) that denied benefits as of May 31, 2020, based on his lack of availability for work with Hy-Vee (employer) unwillingness to work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 19, 2021. The claimant participated personally. The employer was represented by Barbara Buss, Hearings Representative, and participated by Connie Heidemann, Human Resources Manager.

The administrative law judge took official notice of the administrative file. 21A-UI-07188.S1, 21A-UI-07189.S1, and 21A-UI-07190.S1 were heard at the same time.

ISSUES:

The issue is whether the claimant is eligible for total or partial unemployment benefits, still employed at the same hours and wages, whether the claimant is able and available for work and/or whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer hired the claimant on January 2, 2020, as a part-time deliver driver. He worked approximately twenty-six hours per week and was paid \$10.00 per hour, or \$260.00 per week.

On or about March 22, 2020, the employer offered the claimant a job as a courtesy clerk. His main task would be retrieval of shopping carts. His hours were 11:00 a.m. to 5:00 p.m., Monday through Friday. The claimant accepted the position at the same \$10.00 hourly rate, or \$300.00 per week. The claimant filed for unemployment insurance benefits with an effective date of March 22, 2020. His weekly benefit amount was determined to be \$154.00. Hours were always available. The claimant often called in or left early due to back pain. For the week ending

April 4, 2020, the claimant worked thirty-one hours. For the three weeks ending April 25, 2020, the claimant worked twenty hours.

At some point, the claimant provided the employer with a doctor's note limiting his hours due to the condition of his back. Based on the physician's note, the employer reduced the claimant's hours to 11:00 a.m. to 3:00 p.m., Monday to Friday or twenty hours per week. Even with the reduction in hours, the claimant frequently left work early due to back pain. For the two weeks ending June 13, 2020, the claimant worked sixteen hours. For the week ending June 20, 2020, the claimant worked five hours. For the week ending June 27, 2020, the claimant worked thirty minutes for the week.

On June 23, 2020, the employer sent the claimant home for the day because two people were scheduled to do the same work for the same shift. The claimant never returned to work even though he was scheduled. On July 2, 2020, the human resources manager called the claimant and asked if he planned to return. The employer had work available for the claimant as a courtesy clerk. The claimant told the human resources manager that he did not plan to return to work. The claimant now believes he is unable to work due to his medical issues.

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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. 871-24.23(1) and (16) provide:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

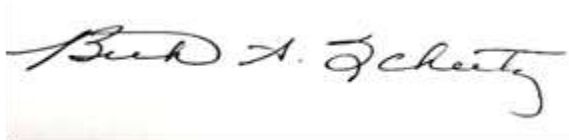
The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). When employers are ill and unable to perform work due to that illness, they are considered unavailable for work. The claimant's physician did not indicate the claimant could not work. The claimant's frequent inability to work even minimal hours, make him unavailable for work as of May 31, 2020.

The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

DECISION:

The March 5, 2021, (reference 02) unemployment insurance decision is affirmed. The claimant is not eligible to receive unemployment insurance benefits as of May 31, 2020, because he is not able and available for work.

The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

A handwritten signature in black ink, reading "Beth A. Scheetz", is positioned above a horizontal line.

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

May 26, 2021
Decision Dated and Mailed

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