

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTI MATT
Claimant

APPEAL NO. 14A-UI-08040-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 07/06/14
Claimant: Respondent (2)

Iowa Code § 96.4(3) – Able and Available
871 IAC 24.23(26) – Same Hours and Wages

STATEMENT OF THE CASE:

The employer filed an appeal from the July 30, 2014, (reference 01) unemployment insurance decision that allowed benefits. After due notice was issued a hearing was held on August 28, 2014. The claimant did not participate. The employer did participate through Tabby Osborn, Human Resources Manager and Bruce Burgess of Corporate Cost Control.

ISSUES:

Is the claimant able to and available for work?

Is she still employed at the same hours and wages as at the time of hire?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed part-time as a checker in the Humboldt, Iowa store beginning on January 14, 2014. She chose to move to Saint Joseph, Missouri and arrived there on May 19, 2014. She had previously spoken to Ms. Osborn to inquire about whether she would be allowed to transfer to the new store. The claimant told Ms. Osborn that she would be available to work any shift any time. She was told she would be allowed to transfer to the Hy-Vee store in Saint Joseph. When the claimant arrived in Saint Joseph and spoke to Ms. Osborn on May 19 she changed her availability and told Ms. Osborn she would not work after 3:00 pm on any day nor would she be willing to start until May 28, 2014. This differed from what the claimant had previously reported to Ms. Osborn when she asked for the transfer. The claimant has not worked all available hours since she transferred to the Saint Joseph, Missouri store. The claimant was never promised any particular amount of hours at either store she worked at. The claimant could work additional hours but is not willing to work after 3:00 p.m. when work is available. Since she started at the store on May 28 the claimant has worked only 206.5 hours of the 246 she has been scheduled. She asks to leave work early.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective July 6, 2014.

Iowa Code § 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. 871-24.23(26), (16) 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.

(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 is not willing to work all hours when work is available for her. She was never promised any number of shifts or hours. She is not working all the hours that she is even scheduled because she wants to leave work early. Under these circumstances the claimant is not considered able to available for work effective July 6, 2014 and benefits are denied.

DECISION:

The July 30, 2014, reference 01, decision is reversed. The claimant is not able to work and available for work effective July 6, 2014. Benefits are denied.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs