

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHAWNITA C AMERISON
Claimant

HY-VEE INC
Employer

APPEAL 24A-UI-00157-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/25/23
Claimant: Appellant (1R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

On January 4, 2024, claimant Shawnita C. Amerison filed an appeal from the December 29, 2023 (reference 09) unemployment insurance decision that denied benefits effective December 10, 2023, determining claimant was not able to work due to illness. The Unemployment Insurance Appeals Bureau mailed notice of the hearing on January 8, 2024. Administrative Law Judge Elizabeth A. Johnson held a telephonic hearing at 2:00 p.m. on Tuesday, January 23, 2024. Appeal numbers 24A-UI-00156-LJ-T and 24A-UI-00157-LJ-T were heard together and created one record. Claimant Shawnita C. Amerison personally participated. Employer Hy-Vee Inc. participated through witness Steven Almonroce, District HR Manager; and was represented by Marlene Sartin with Corporate Cost Control Inc. Claimant's Exhibit A was received and admitted into the record without objection. The administrative law judge took official notice of the administrative record.

ISSUE:

Is the claimant able to work and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant began working for the employer on August 9, 2023. She was hired as a part-time cashier and worked part-time hours throughout her employment. Claimant's employment with Hy-Vee Inc. ended on December 5, 2023.

Claimant last reported to work on December 5, 2023. She was then scheduled to work the following three days, but she called in sick all three days. At the time, claimant had an infection in her hand that prevented her from working. Riley called claimant to check on her. During that conversation, Riley told claimant that she would need to provide the employer with a doctor's note to excuse her absences. Claimant was scheduled for several shifts the following week, December 10 through December 16. However, she provided the employer with a doctor's note stating she was excused from work through December 15. (Claimant Exhibit A) The doctor's note allowed claimant to return to work on December 16. (Claimant Exhibit A)

Claimant was scheduled to work on December 18; December 21; and December 22. She did not report to work for any of those three shifts, and she did not call in to report her absences. Based on claimant's three consecutive no-call/no-show absences, the employer ended claimant's employment. Claimant was not physically able to work the week of December 17, due to the flu and possible COVID. She remained ill until the week of December 24, 2023.

Claimant reopened her unemployment insurance claim with an additional claim date of December 10, 2023. She filed weekly continued claims for benefits for the weeks ending December 16; and December 23, 2023. Claimant continued filing for benefits each consecutive week, most recently for the week ending January 20, 2024 (as of the week of the hearing).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is not available for work.

Iowa Code section 96.4(3) states: "An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that [the] individual is able to work, is available for work, and is earnestly and actively seeking work..."

Iowa Admin. Code r. 871-24.22(1) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.23 provides in relevant subparts:

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.

(34) Where the claimant is not able to work due to personal injury.

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

For an unemployed individual to be eligible to receive benefits, she must be able to work, available for work, and actively seeking work as required by the unemployment insurance law, Iowa Code § 96.4(3). The burden is on the claimant to establish that she is able and available for work within the meaning of the statute.

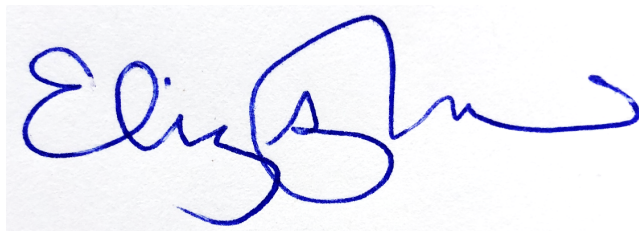
In this case, claimant's testimony and documentation show she was not able to work the weeks of December 10 through December 23 due to personal illness and/or injury. The employer had claimant's part-time hours available for her, but claimant (unwillingly) took herself away from work due to her hand injury and the flu. Unemployment insurance benefits are not meant to compensate an individual for work missed due to illness or injury; that is the purpose of sick leave or short-term disability benefits. See e.g. *White v. Employment Appeal Board*, 487, N.W.2d 342, 345 (Iowa 1992) ("the Employment Security Law is not designed to provide health and disability insurance"); *Amana refrigeration v. Iowa Dept. of Job Service*, 334 N.W.2d 316, 318 (Iowa App. 1983) ("We do not think the legislature intended to make unemployment benefits available for claimants who were not even 'available for work' with their own employers."). Claimant has not met her burden of establishing her ability to work. Accordingly, benefits are withheld.

This matter will be remanded so Iowa Workforce Development may hold a fact-finding interview and determine claimant's eligibility for benefits based on her separation from employment.

DECISION:

The December 29, 2023 (reference 09) unemployment insurance decision is affirmed. Claimant is not able to work effective December 10, 2023, due to illness and/or injury. Benefits are withheld for the two weeks ending December 23, 2023.

REMAND: The Benefits Bureau shall hold a fact-finding interview and issue a decision determining whether claimant is eligible for benefits based on her separation from Hy-Vee Inc.



Elizabeth A. Johnson
Administrative Law Judge

January 29, 2024
Decision Dated and Mailed

lj/rvs

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.