

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TISHA L MAY
Claimant

APPEAL NO: 09A-UI-09687-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 01/25/09

Claimant: Respondent (1)

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

Hy-Vee, Inc. (employer)) appealed a representative's June 26, 2009 decision (reference 03) that concluded Tisha L. May (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 21, 2009. The claimant participated in the hearing. Kenneth Carp, attorney at law, appeared on the employer's behalf and presented testimony from one witness, Mike Hoffman. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant started working for the employer on September 18, 1995. She worked full time as a product manager at the employer's Eldora, Iowa store. Her regular schedule was to work five days per week, starting between 5:00 a.m. and 7:00 a.m., and ending between 1:00 p.m. and 4:00 p.m. Her last day of work was January 19, 2009. As determined by a representative's decision issued on February 18, 2009 (reference 01), the separation was not disqualifying.

At the end of February 2009 the claimant and her husband purchased a restaurant and bar. The claimant began working in the business as a cook, usually from about 3:00 p.m. to about 10:00 p.m., Tuesday through Saturday. As determined in a representative's decision issued on April 16, 2009 (reference 02), this involvement on the part of the claimant in the business was determined not to render her unable and unavailable for other employment on the same basis as her employment with the employer had been.

Since the April 16 decision, the only notable change in the claimant's involvement in the business has been to do some catering at a local country club one Sunday a month for a couple months, and to drop off a pre-prepared meal to a local civic group's weekly meeting. These

activities only added on average a few hours to the claimant's involvement with her business. She continues to perform a work search for full time employment, and would hire someone else to perform her functions in the restaurant and bar if she were offered suitable employment elsewhere.

REASONING AND CONCLUSIONS OF LAW:

With respect to any week in which unemployment insurance benefits are sought, In order to be eligible the claimant must be able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4-3.

A claimant must remain available for work on the same basis as when her base period wages were accrued. 871 IAC 24.22(2)f. She must remain in a position to accept suitable employment during periods when the work is normally performed. 871 IAC 24.22(2)l. The claimant is adequately available, and is performing her required work searches. 871 IAC 24.22(3). Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's June 26, 2009 decision (reference 03) is affirmed. The claimant is able to work and available for work. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css