

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER S DAVIS
Claimant

APPEAL NO. 13A-UI-02935-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 01/06/13
Claimant: Appellant (1)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant, Jennifer Davis, filed an appeal from a decision dated March 5, 2013, reference 02. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on April 9, 2013. The claimant participated on her own behalf. The employer, Hy-Vee, participated by Human Resources Manager Kim Stevens and was represented by Corporate Cost Control in the person of Julie Church.

The parties were advised by the administrative law judge prior to the hearing that if the connection was lost during the hearing, the judge would not call back until the Appeals Section was contacted with a new phone number or an assurance the original phone was working again. The claimant lost the connection on the cell phone at 9:09 a.m. By the time the record was closed at 9:12 a.m. the claimant had not called back as instructed and did not participate.

ISSUE:

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

FINDINGS OF FACT:

Jennifer Davis was employed by Hy-Vee beginning May 25, 2012 as a part-time clerk. She was not guaranteed any minimum number of hours per day, week or pay period as a part-time employee. Ms. Davis filed a claim for unemployment benefits with an effective date of January 6, 2013 stating she was still work and maintained her hours had been cut. The employer's records indicated her scheduled hours were not reduced but that she had called in absent due to illness 17 times in December 2012 and January 2013, which reduced the number of hours she worked and she earned less during that time.

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".

871 IAC 24.23(26) 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.

The claimant was hired as a part-time employee with no assurance of a specific number of hours. Her scheduled hours were not cut but her absences due to illness did result in her earning less. She cannot be considered to be working on a reduced work week basis due to the fact she was always part time. Under the provisions of the above Administrative Code section, she is not eligible for unemployment benefits.

DECISION:

The representative's decision of March 5, 2013, reference 02, is affirmed. Jennifer Davis is not eligible for unemployment benefits as she is not able and available for work.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/tll