

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MALCOLM C PARKS**

Claimant

**APPEAL NO: 14A-UI-11098-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**

Employer

**OC: 11/17/13**

**Claimant: Appellant (1)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Malcolm C. Parks (claimant) appealed a representative's October 17, 2014 (reference 03) decision that concluded he was not 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 November 14, 2014. The claimant participated in the hearing. A review of the Appeals Section's conference call system indicates that Hy-Vee, Inc. (employer) failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. During the hearing; Claimant's Exhibits A and B were entered into evidence. Based on the evidence, the arguments of the claimant, 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 or about April 25, 2012. He worked full time as a grill cook in the employer's Fort Madison, Iowa store's kitchen operation. However, due to a non-work-related injury, he changed his position to part time (about 20 to 25 hours per week) as of about June 2013. His last day of work for the employer was November 2, 2013.

As of August 14, 2014 the claimant has been given a release to work but under a ten-pound lifting restriction and only light-duty work. He is also still only able to work about 20 to 25 hours per week.

The claimant established an unemployment insurance benefit year effective November 17, 2013. His base period was set as the third quarter 2012 through the second quarter 2013. The high quarter of his base period was the fourth quarter 2012, when he was still working full time; based upon those wage credits, the claimant's weekly benefit amount was set as \$170.00.

**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, be available for work, and be earnestly and actively seeking work. Iowa Code § 96.4-3. However, a claimant must remain available for work on the same basis as when his base period wages were accrued. Rule 871 IAC 24.22(2)f. The claimant is currently not available on the same full time basis as when his wage credits were accrued.

Benefits are denied until or unless he subsequently becomes further available for work.

**DECISION:**

The representative's October 17, 2014 (reference 03) decision is affirmed. The claimant is currently not able to work and available for work.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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