

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSAN M KLAAS
Claimant

APPEAL NO. 11A-UI-02598-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 01/02/11
Claimant: Respondent (2/R)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Hy-Vee (employer) appealed a representative's February 23, 2011 decision (reference 01) that concluded Susan Klaas (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 28, 2011. The claimant participated personally. The employer was represented by John Fiorelli, hearings representative, and participated by Jackie Kuennen, human resource manager, and Greg Westphal, bakery manager.

ISSUE:

The issue is whether the claimant is disqualified for being unavailable for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on October 14, 2009, as a part-time bakery clerk. The claimant told the employer that she could work 8:00 a.m. to 5:00 p.m. weekdays and could not work weekends because she had church and child care commitments. The claimant wanted to work ten to fifteen hours per week. The employer told the claimant that she would not be guaranteed a set number of hours. She consistently averaged about twelve hours per week.

After working for a few months, the claimant wanted to work more hours and told the employer she would be willing to work some weekends. The employer chose not to give additional hours for the claimant due to business reasons. On January 19, 2011, the claimant quit work.

REASONING AND CONCLUSIONS OF LAW:

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 worker and is still working part-time for the employer. She is not considered to be unemployed within the meaning of the law. The claimant is disqualified from receiving unemployment insurance benefits. The issue of the claimant's separation from employment is remanded for determination.

DECISION:

The representative's February 23, 2011 decision (reference 01) is reversed. The claimant is disqualified from receiving unemployment insurance benefits. The issue of the separation is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw