

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAMANTHA A STUMPF

Claimant

APPEAL NO. 09A-UI-05909-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC

c/o UNEMPLOYMENT INSURANCE SVCS

Employer

OC: 03/15/09

Claimant: Respondent (1)

Section 96.4-3 – Employed at Same Hours and Wages

STATEMENT OF THE CASE:

Hy-Vee, Inc. filed an appeal from a representative's decision dated April 10, 2009, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was conducted on May 13, 2009. Ms. Stumpf participated personally. The employer participated by Mr. Timothy Speir, Hearing Representative, and witness Jason Crocker, Store Manager. Exhibits One through Four were received into evidence.

ISSUE:

The issue is whether the claimant is performing services in the same pattern of employment as in the base period.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant is employed as a part-time cashier for Hy-Vee. The claimant was hired on a part-time basis working three to five days per week averaging 24 to 30 hours of employment per week. The claimant was paid by the hour. Ms. Stumpf filed a claim for unemployment insurance benefits after the employer unilaterally decreased her working hours from three to five days per week to one day per week as a disciplinary action. The employer did not believe that the claimant was being friendly enough to shoppers and, therefore, substantially reduced the number of working hours that were available to Ms. Stumpf.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes that the claimant is eligible to receive unemployment insurance benefits.

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 evidence in the record establishes that Ms. Stumpf was hired to work on a part-time basis as a cashier for Hy-Vee, Inc. and that the claimant during her base period worked three to five days per week averaging 24 to 30 hours per week and was paid by the hour. The pattern of employment established under the agreement of hire and in the claimant's base period was unilaterally changed by the employer when the employer chose to reduce the claimant's working hours to one day per week as a disciplinary action. The claimant has denied any intentional conduct that caused her hours to be reduced.

The evidence in the record establishes the claimant was able and available for work and is available to work additional hours made available to her by Hy-Vee as the claimant's working hours were reduced by the employer and the employee is not working in the same pattern of employment as in the base period and, therefore, is partially unemployed and eligible to receive unemployment insurance benefits, provided that she meets other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated April 10, 2009, reference 01, is affirmed. The claimant is still employed part-time working on call and is available for work and eligible to receive unemployment insurance benefits, provided that she meets other eligibility requirements of the law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs