

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CINDY J LONG
Claimant

APPEAL NO. 09A-UI-06832-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 01/11/09
Claimant: Appellant (4R)

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 28, 2009, reference 02, decision that denied benefits as of January 11, 2009. After due notice was issued, a telephone conference hearing was held on May 29, 2009. Claimant participated. Employer participated through Karen Mills and Leah Hefel.

ISSUE:

The issue is whether claimant is able to and available for work effective February 22, 2009.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The reference 01 representative's decision allowed benefits as of January 11, 2009 and was not appealed. The reference 02 decision is dated February 18 so this decision applies from that date forward.

Claimant is a delicatessen clerk and has worked between 30 and 40 hours per week since she was hired five years ago but is considered a part-time employee. The hours are generally reduced during the winter because of seasonal business reduction. She and employer have agreed since her hire almost five years ago that she will not be scheduled to work Thursday evenings. Employer mistakenly scheduled her for Thursdays March 26 and April 9, 2009 so she was unable to work but was otherwise available to work those weeks. She requested time off on April 16, 17 and 18 to have a garage sale and was not available for work the majority of that week.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work.

Iowa Code § 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 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Claimant was not available for work for the majority of the work week ending April 18, 2009. Since the scheduling error for the other two days was the employer's and she was otherwise available to work the majority of the week, claimant is considered able to and available for work effective February 15, 2009.

DECISION:

The April 28, 2009, reference 02, decision is modified in favor of the appellant. The claimant is not able to work and available for work the week ending April 18, 2009 and may be overpaid for that week.

REMAND:

The issue of any potential overpayment is remanded to the claims section of Iowa Workforce Development for an initial investigation and determination.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs