

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY J LYONS
Claimant

APPEAL NO. 09A-UI-04937-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 01/18/09
Claimant: Appellant (1)

Section 96.4-3 – Eligibility for Benefits

STATEMENT OF THE CASE:

Timothy J. Lyons filed a timely appeal from an unemployment insurance decision dated March 18, 2009, reference 03, that denied unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held April 22, 2009 with Mr. Lyons participating. Adam Gillies participated for the employer, Hy-Vee, Inc.

ISSUE:

Is the claimant a partially unemployed individual who is eligible for unemployment insurance benefits?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Timothy J. Lyons has been employed as a part-time bagger by Hy-Vee, Inc. since March 21, 2008. He began working the third shift, receiving 32 to 36 hours of work per week. At his request, he transferred to the day shift. Before the transfer, Assistant Store Director Adam Gillies told Mr. Lyons that he would earn a lower hourly wage and would most likely receive fewer hours of work per week. With this knowledge, Mr. Lyons continued with the transfer. He filed a claim for unemployment insurance benefits when his earnings fell due to fewer hours and a lower hourly wage.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the claimant is a partially unemployed individual who is eligible for unemployment insurance benefits. He is not.

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".

While the evidence establishes that the claimant's hourly wage and number of hours of work per week has declined, it also establishes that these declines were because of the claimant's voluntary choice to switch from the third shift. Since the reductions were due to the claimant's voluntary action, the administrative law judge concludes that he is not eligible for unemployment insurance benefits.

DECISION:

The unemployment insurance decision dated March 18, 2009, reference 03, is affirmed. The claimant is not eligible for unemployment insurance benefits.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs