

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMANDA K ZACH**  
Claimant

**APPEAL NO. 13A-UI-02206-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**REOPCO INC**  
**ROAD RANGER**  
Employer

**OC: 01-06-13**  
**Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the February 14, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 21, 2013. The claimant did participate. The employer did participate through Debbie Czarnyszka, Regional Manager and Cathy Morrison, Store Manager.

**ISSUE:**

Was the claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was initially hired to work part-time on the third shift beginning May 17, 2011. In the summer of 2011 she was promoted to the second assistant manager position and was moved to the second shift which was usually from 3:00 p.m. until 7:00 p.m. or from 3:00 p.m. until 11:00 p.m. When the claimant was hired she placed no limitation on the hours or days she could or would work. As a second shift assistant manager she normally worked three weekends per month as that was the employer's busy sales time. In January 2013 the claimant changed her availability to no longer include working on Saturday and Sunday. The claimant changed her availability after she was demoted. The claimant was demoted from second assistant manager to cashier on January 2, 2013 due to her poor attendance. The claimant had three prior warnings about her attendance on June 5, 2012, June 17, 2012 and September 12, 2012. The last warning given to the claimant put her on notice that her job was in jeopardy. The claimant was absent on December 30, 2012. The claimant was to work at 11:00 a.m. and did not call in to report her absence until forty-five minutes after her start time. The claimant called in late because she overslept. The claimant could not find a replacement to cover her shift so she came into work almost four hours late and finished working her shift. The claimant was able to work the shift, but overslept. The claimant as a manager was expected to be on time and follow the attendance policy so as to set an example for other employees.

After she was demoted due to her own poor attendance, the claimant changed her availability and limited the days and hours she would work. On January 3, 2013 the employer found a note from the claimant indicating she would only work Monday through Thursday on first or second shift. The claimant also asked to be on vacation for the one week beginning February 11, 2013. She had previously worked at least three weekends every month. When the claimant was hired she knew that she would be required to work weekends. The claimant chose to work less hours due to the justified demotion. No management person ever refused to speak to the claimant. The claimant was asked to work additional hours but refused to do so. The claimant's hours were reduced due to her own choice to stop working weekends and due to her demotion due to poor attendance. The claimant also has given away hours she was scheduled to work.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is not 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 24.23(3) provides:

(3) If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work, such individual will be deemed not to have met the availability requirements of Iowa Code § 96.4(3).

871 IAC 24.23(16) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

The claimant was demoted as part of a disciplinary action after several warnings for the same or similar behavior. The disciplinary demotion was due to the claimant's job connected misconduct. That is, her own failure to follow the attendance policy. The claimant could have continued to work more hours but chose to reduce the number of days and hours she would

work. It was her choice to limit her hours after the demotion. The employer was under no obligation to accommodate her change in the days she would work. The claimant is working fewer hours based on her choice not to work the hours when work was available. She is not able to and available for work effective January 6, 2013. Accordingly, benefits are denied.

**DECISION:**

The February 14, 2013 (reference 01) decision is affirmed. The claimant is not able to work and available for work effective January 6, 2013. Benefits are denied.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs