

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOYCE A LEPLEY
Claimant

APPEAL NO. 11A-UI-15795-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 04/03/11
Claimant: Appellant (1)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Joyce Lepley (claimant) appealed a representative's December 9, 2011 decision (reference 03) that concluded she was not eligible to receive unemployment insurance benefits because she is still employed with Hy-Vee (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 12, 2012. The claimant participated personally. The employer did not provide a telephone number where it could be reached and, therefore, did not participate.

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 considered all of the evidence in the record, finds that: The claimant was hired on October 6, 2010. On July 25, 2011, she became a fuel island assistant. She consistently works four days on and four days off. She works nine hour days. Due to her pay structure, some weeks she works three days and others she works four days. The claimant filed for unemployment insurance benefits because she felt it was unfair to be paid for less than four days per week even though she worked less than four days in a particular week. She would like her paychecks to be consistent.

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 was still employed in a part-time position as was agreed to at the time she was hired. The claimant is disqualified from receiving unemployment insurance benefits because she is not available for work.

DECISION:

The representative's December 9, 2011 decision (reference 03) is affirmed. The claimant is disqualified from receiving unemployment insurance benefits because she is not available.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css