

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRYAN-KRUEGER STARR**  
Claimant

**APPEAL NO. 10A-UI-00551-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**Original Claim: 03-22-09  
Claimant: Appellant (1)**

Section 96.4-3 – Able and Available  
871 IAC 24.23(26) – Same Hours and Wages

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the January 7, 2010, reference 04, decision that denied benefits. After due notice was issued, a hearing was held on February 22, 2010. The claimant did participate. The employer did participate through Eric Lahart, Manager of Perishables.

**ISSUE:**

Is the claimant still employed at the same hours and wages as the time of hire?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a night stocker, part-time, beginning June 20, 2006 through date of hearing. When the claimant was hired, he was told that he was not guaranteed any particular number of hours per week. Part-time employees are not guaranteed or promised any particular number of hours, only regular-time and full-time employees. The claimant is making more per hour now than at the time of his hire.

**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 effective November 29, 2009.

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".

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 to work part-time with no guarantee of any particular amount of wages. He is still employed under the same terms and conditions at the time of his hire and cannot be considered partially unemployed. Accordingly, benefits are denied.

**DECISION:**

The January 7, 2010, reference 04, decision is affirmed. The claimant is not able to work and available for work effective November 29, 2009. Benefits are denied.

---

Teresa K. Hillary  
Administrative Law Judge

---

Decision Dated and Mailed

tkh/kjw