

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HAJRUSA KADUSIC
Claimant

APPEAL NO. 10A-UI-00001-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 11/08/09
Claimant: Respondent (1)

Section 96.4-3 – Still Employed at Same Hours and Wages

STATEMENT OF THE CASE:

Hy-Vee Inc. filed a timely appeal from a representative's decision dated December 24, 2009, reference 01, which held claimant eligible to receive partial unemployment benefits upon a finding that although employed part time while working on call the claimant has not performed services in the same pattern of employment as in the base period. After due notice, a telephone conference hearing was conducted on February 10, 2010. The claimant participated personally. The employer participated by Ms. Annie Salgado, Human Resource Manager. The official interpreter was Aldigana Radoncic.

ISSUE:

At issue is whether the claimant is eligible to receive partial unemployment benefits because she is not performing services in the same pattern of employment as in the base period.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Claimant began employment with Hy-Vee Food Stores in November 2000 and continues to be employed as a part-time bakery clerk. At the time of hire and substantially throughout her period of employment Ms. Kadusic was assigned to work 20 to 30 hours per week as a part-time bakery clerk for the company. Ms. Kadusic was not informed at the time of hire that as a part-time employee there was no guarantee of a minimum number of working hours.

In the year 2009 it appears that Ms. Kadusic had to undergo surgery on at least two occasions and had been given a leave of absence by the employer. The claimant had also been absent for other reasons at times. Because the claimant had not been available to fill working hours available to her because of the leave of absence or absences due to medical issues, the employer believed it was necessary to hire an additional bakery worker and did so. Ms. Kadusic filed a claim for partial unemployment insurance benefits after her working hours were substantially reduced in November of 2009 at times to as few as seven hours per week.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes that the claimant is not still employed in a part-time job at the same hours and wages as contemplated in the original contract of hire or in the claimant's base period.

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 in this matter testified that when she was hired in November of 2000 she was not informed that as a part-time employee there was no guarantee as to a minimum number of hours she might be assigned each working week. The claimant further testified that upon being employed she routinely worked 30 hours or more each week but subsequently worked between 20 and 30 hours per week for a number of years before she was required to take time away from work for medical reasons. In November 2009 the claimant's working hours were substantially reduced by the employer when the company made a business decision to hire another worker for the company's bakery area. The claimant's working hours were reduced at times to as low as seven hours per week.

Although the employer's witness routinely informs new hires now that there is no guarantee as to minimum hours for part-time workers, Ms. Saldago has no knowledge of what representations were made to the claimant at the time that she was hired. The evidence in the record clearly establishes that the claimant is not performing services in the same pattern now in employment as in the base period or as understood by the claimant when the parties originally agreed to begin employment in November 2000. The employers account thus will not be relieved of charging for benefits on Ms. Kadusic's unemployment insurance claim.

If the claimant makes herself unavailable for work offered any week, this matter should be reported to Workforce Development so that the matter can be investigated and unemployment benefits are not paid for periods when the claimant is unavailable for work.

DECISION:

The representative's decision dated December 24, 2009, reference 01, is affirmed. The claimant is partially unemployed within the meaning of the law as she is still employed by Hy-Vee Inc. in a part-time job but not in the same pattern of employment as in the base period or the terms and conditions as hired.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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