

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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HY-VEE FOOD STORES INC
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ST LOUIS MO 63166-0283

TALX UC EXPRESS
4100 HUBBELL #78
DES MOINES IA 50317-4546

Appeal Number: 04A-UI-00301-LT
OC 06-22-03 R 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the January 2, 2004, reference 04, decision that denied benefits. After due notice was issued, a hearing was held on January 28, 2004. Claimant did participate. Employer did participate through Chuck Underhill and Pete Bilden and was represented by David Williams of Talx UC Express. Megan O'Boyle did not participate.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time pharmacy tech working three partial days per week through October 12 when she was in the hospital and had surgery on October 20. The physician released her to return to work on December 1 for two days per week. Claimant did return to

work on December 1 according to the terms of her release. On January 4, claimant resumed working three partial days per week pursuant to a full medical release. Claimant later gave her notice to quit effective January 29, 2004 to take another job.

Between November 16, 2003 and December 1, claimant searched for work but was not available for work until her partial release on December 1, 2003.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work between November 16 and December 1, 2003.

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".

Although claimant's physician allowed her to search for work, she was not allowed to actually work until December 1, 2003. If she had been released to work, she could have returned to her job at Hy-Vee where work was available to her within her restrictions. Accordingly, benefits are denied effective November 16, 2003, as claimant was not medically able to work at that time.

DECISION:

The January 2, 2004, reference 04, decision is affirmed. The claimant was not able to work and available for work effective November 16, 2003. Benefits are withheld until such time as claimant obtains a full release to return to her regular duties.

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