

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

LOCHEREE L WHITE
Claimant

APPEAL NO: 19R-UI-00603-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 11/11/18
Claimant: Appellant (1)

Section 96.4-3 – Able and Available for Work
Section 96.4-3 – Same Hours and Wages

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 5, 2018, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 5, 2019. The claimant participated in the hearing. Lacey Ramsey, Human Resources Manager; Bruce Anderson, Bakery Manager; Jeff Mallory, Store Director; and Frankie Patterson, Employer's Representative, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant is still employed with the employer for the same hours and wages as contemplated in the original contract of hire.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time donut finisher/sweet shop clerk for Hy-Vee from August 3, 2017 to November 21, 2018, and continued to be employed in that capacity throughout her employment with the store.

The donut finisher position hours were 4:00 a.m. to 10:00 a.m. and the sweet shop clerk position hours were approximately 10:00 a.m. to 2:00 p.m. or 11:00 a.m. to 3:00 p.m. On October 4, 2018, the claimant provided the employer with a note from her doctor stating it was difficult for the claimant to get up for her 4:00 a.m. shifts and asked the employer to accommodate her by not having her come in so early. The employer discussed the change with the claimant and the fact that the donut finisher position paid more. The claimant indicated an interest in transferring to a bakery cook position but told Human Resources Manager Lacey Ramsey she would get back to her about her hours. The employer started scheduling the claimant for two days as the donut finisher and two days as the sweet shop clerk so she could continue to receive 29 hours per week as she requested.

The claimant worked that schedule until November 21, 2018, at which time she walked off the job. The other donut finisher resigned November 19, 2018, because she lost her transportation and the employer assigned her shifts to the claimant for the remainder of that schedule.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was employed at the same hours and wages as contemplated in the original contract of hire.

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".

Iowa Admin. Code r. 871-24.23(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 donut finisher/sweet shop clerk. Prior to her separation, the claimant was working for this employer at the same hours and wages as contemplated in the original contract of hire. Consequently, the claimant is disqualified from receiving benefits based on her part-time employment.

DECISION:

The December 5, 2018, reference 01, decision is affirmed. The claimant was employed at the same hours and wages as in her original contract of hire and therefore cannot be considered partially unemployed. Benefits are denied.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn