

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDA K REWERTS
Claimant

APPEAL NO. 09A-UI-02844-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

**Original Claim: 01/04/09
Claimant: Appellant (1)**

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated February 12, 2009, reference 01, which held claimant not able and available for work. After due notice, a telephone conference hearing was scheduled for and held on March 18, 2009. Claimant participated personally. Employer participated by Bridgette Geipel, Store Director, and Kent McKibben, Kitchen Manager. Claimant failed to respond to the hearing notice and did not participate. Exhibits One and A were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: Claimant worked on average 15 to 18 hours a week in the Kitchen department. Claimant was transferred to the Grocery department, where she worked on average 15 to 18 hours a week. Claimant went below the average on weeks she called in sick. Claimant was offered 15 to 18 hours a week for all weeks subsequent to January 4, 2009. The illness was not work-related.

REASONING AND CONCLUSIONS OF LAW:

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".

Inasmuch as the time lost from work was due to illness, claimant has not established the ability to work. Benefits are withheld effective January 4, 2009.

DECISION:

The decision of the representative dated February 12, 2009, reference 01, is affirmed. Claimant is not eligible to receive unemployment insurance benefits, effective January 4, 2009.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/kjw