

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROSE L PLAIN
Claimant

APPEAL NO. 09A-UI-04079-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 01/25/09 R: 01
Claimant: Respondent (2-R)

Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated March 3, 2009, reference 03, that concluded the claimant was eligible for partial unemployment insurance benefits. A telephone hearing was held on April 9, 2009. The parties were properly notified about the hearing. The claimant provided a phone number for the hearing but was not available at that number at the time of the hearing. Joe Connell participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant worked for the employer as a cashier from April 29, 2008, to March 7, 2009. She was hired as a part time worker and informed that the employer did not guarantee her any certain number of days or hours of work per week.

The claimant filed a claim for unemployment insurance benefits with an effective date of January 25, 2009. The employee had started scheduling her for one or two shifts per week because the claimant had been absent at least one shift per week from October through the end of December 2008. The manager told her that she would get more shifts if she could demonstrate she was reliable by showing up for her scheduled shifts.

Despite this warning, the claimant continued to miss work. She was late for work on January 28 and worked only four hours of her six-hour shift. She failed to report her earnings for that week on her weekly claim. The week of February 1-7, she notified the employer that she was unavailable to work that week. She was scheduled to work during the week of February 8-14, but called in sick. The claimant worked her scheduled shifts on February 19 and 24. The claimant worked on March 6 and 7 for a total of 14.61 hours, but she only reported \$51.00 in wages instead of the \$124.19 in wages she should have reported. The claimant was absent from work for her scheduled shifts during the weeks of March 8-14 and March 15-21.

The claimant was scheduled to work after March 10 but has been unable to work due to illness. On March 14 the claimant went to the hospital and was taken off work until her next follow up visit. She went to the doctor on March 31 and was taken off work indefinitely.

The claimant filed for and received a total of \$2,184.00 in unemployment insurance benefits for the weeks between January 25 and April 4, 2009.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code section 96.4-3.

The preponderance of the evidence establishes the claimant has not been available for work since January 25, 2009. She has been unable to work due to medical reasons since March 14 and even before that was absent for most of her scheduled shifts.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated March 3, 2009, reference 03, is reversed. The claimant is disqualified from receiving unemployment insurance benefits effective January 25, 2009, and continuing until she reestablishes she is able and available for work.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css