

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DAMEION F WATKINS-SMART
Claimant

HY-VEE INC
Employer

APPEAL 23A-UI-09041-LJ

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/06/23
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

On September 22, 2023, claimant Dameion F. Watkins-Smart appealed the September 19, 2023 (reference 01) unemployment insurance decision that denied benefits effective August 6, 2023, determining she was on a leave of absence from Hy-Vee Inc. and was not able to and available for work. The parties were properly notified of the hearing. Administrative Law Judge Elizabeth A. Johnson held an in-person hearing at the IowaWorks office in Davenport, Iowa at 11:00 a.m. on Wednesday, October 11, 2023. Claimant Dameion F. Watkins-Smart participated. Employer Hy-Vee Inc. did not appear or request to participate via telephone; it did not participate in the hearing. Claimant's Exhibits A, B, C, and D were admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for this employer on September 26, 2022. She was hired as an order processor, a sedentary position in which she performed mostly computer work related to order fulfillment and communications. Later, claimant was moved to a wrapper position in the regional bakery. In this position, claimant performed physical work loading pallets, labeling bread, and wrapping carts. Claimant worked full-time hours throughout her employment and is still employed.

Claimant went on medical leave in April 2023 for a condition that she believes is attributable or exacerbated by her work environment. The employer refused to allow her to file a first report of injury or seek worker's compensation benefits. Claimant received medical treatment and was released to return to sedentary work with no repetitive neck manipulation. (Exhibit A) The employer does not have sedentary work available any longer, because it eliminated the order processor position at some point in 2023. (Exhibit 3)

The employer offered claimant the opportunity to return to work part time, which claimant initially accepted. She later refused this offer, determining she only wanted to work full-time hours.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is able to and available for work.

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:

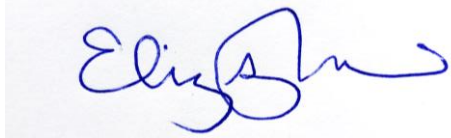
3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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".

The evidence in the record includes claimant's testimony, claimant's medical documentation, claimant's job application, email correspondence between claimant and the employer, the documentation sent to and created by the Iowa Workforce Development ("IWD") fact-finder, and claimant's unemployment insurance claim records. The weight of this evidence convinces me that claimant's vertigo, at minimum, was exacerbated and further antagonized by the harsh gases and chemicals in her work environment.

Claimant sustained a work-related injury. Prior to the effective date of her claim, her physician released claimant to return to work with restrictions. Claimant was able to and available for work within those restrictions. Employer had no work available – or at least offered claimant no work – within the restrictions. Accordingly, benefits are allowed provided claimant is otherwise eligible.

DECISION:

The September 19, 2023 (reference 01) unemployment insurance decision is reversed. Claimant is able to and available for work effective August 6, 2023. Benefits are allowed, provided she is otherwise eligible.



Elizabeth A. Johnson
Administrative Law Judge

October 12, 2023
Decision Dated and Mailed

LJ/jkb

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

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.

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.