

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LARRY KONICEK
Claimant

HY-VEE INC
Employer

APPEAL NO: 20A-UI-10476-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/03/20
Claimant: Appellant (1)

Section 96.4-3 – Able and Available for Work
871 IAC 24.23(26) – Same Hours and Wages
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 26, 2020, 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 October 15, 2020. The claimant participated in the hearing with his sister Joyce Konicek. Linda Pochobradsky, Human Resources Manager and Barbara Buss, Employer 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: A disqualification decision was mailed to the claimant's last known address of record on June 26, 2020. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by July 6, 2020. The appeal was not filed until August 26, 2020, which is after the date noticed on the disqualification decision. The claimant's sister completed his appeal and sent it back. She testified under oath that she sent it to the Department July 6, 2020. Under these circumstances, the administrative law judge must conclude the claimant's appeal is timely.

The claimant was hired as a part-time stocker for Hy-Vee February 10, 2020. He previously worked for the employer full-time but in February 2020 the store reorganized and was no longer open 24 hours. The night stockers are scheduled from 5:00 a.m. to 12:00 p.m. The claimant accepted the part-time position as a stocker February 10, 2020, and continues to be employed in that capacity with no change in his hours or wages.

REASONING AND CONCLUSIONS OF LAW:

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

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".

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 stocker February 10, 2020. That became his new contract of hire. Since June 30, 2020, the claimant has left early 17 times, has been absent ten days and was tardy on one occasion. There has been no separation from his part-time employment and the claimant is currently working for this employer at the same hours and wages as contemplated in the original contract of hire. The claimant is disqualified from receiving benefits based on his part-time employment.

DECISION:

The June 26, 2020, reference 01, decision is affirmed. The claimant is still employed at the same hours and wages as in his original contract of hire and therefore is not qualified for benefits based on his part-time employment. The employer's account is not subject to charge based on the claimant's part-time employment.



Julie Elder
Administrative Law Judge

October 21, 2020
Decision Dated and Mailed

je/mh

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.