

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MIRANDA L WINKLEMAN
Claimant

APPEAL NO: 11A-UI-13232-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET CORPORATION
Employer

**OC: 03/27/11
Claimant: Appellant (2/R)**

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

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's September 28, 2011 determination (reference 01) that denied her benefits as of August 14, 2011, because she was not available to work the hours her occupation required. The claimant participated in the hearing. The employer did not respond to the hearing notice or participate in the hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge finds the claimant eligible to receive benefits for the week ending August 20, 2011.

ISSUE:

As of August 14, 2011, did the claimant reduce her availability to work?

FINDINGS OF FACT:

The claimant started working for the employer in October 2007. She was available to work seven days a week, 10 p.m. to 6:30 a.m. Her availability to work these hours has not changed. The employer usually schedules her to work 11 p.m. to 6:30 a.m.

The claimant reopened her claim the week of August 14, 2011. The claimant is eligible to receive a maximum of \$286 in benefits each week.

The week ending August 20, 2011, she worked 21.9 hours and earned \$258. She did not work 7.5 hours she had been scheduled to work on August 14. The week ending August 27, the claimant worked about 36.4 hours and earned \$403. After the claimant reopened her claim the week of August 14, she filed claims for the weeks ending August 20 and 27.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits, she must be able to and available for work. Iowa Code § 96.4(3). The claimant is available to work seven days a week, 10 p.m. to 6:30 a.m. The employer schedules her to work in accordance with the employer's business needs. Even when the claimant is absent from one day of scheduled work in a week, she is not

restricting her availability to work. A claimant is considered available for work when she is available to work the majority of the week for her regular employer. 871 IAC.23.31.

The employer hired the claimant with the understanding, she was available to work at nights and this has not changed. The evidence does not establish that the claimant restricted her availability to work. As of August 14, 2011, she is eligible to receive benefits, if she meets all other eligibility requirements.

The only two weeks the claimant filed claims for benefits after she reopened her claim were the weeks ending August 20 and 27. The claimant is not eligible to receive benefits for the week ending August 27, because she earned excessive wages and is not eligible to receive partial benefits this week. 871 IAC 24.18. The claimant is eligible to receive partial benefits for the week ending August 20, 2011. This matter will be remanded to the Clams Section to determine the amount of partial benefits the claimant is eligible to receive for the week ending August 20, 2011.

DECISION:

The representative's September 28, 2011 determination (reference 01) is reversed. The claimant is eligible to receive benefits as of August 14, 2011. She did not restrict her availability to work for the employer and was available to work the majority of the week. The claimant is not eligible to receive benefits for the week ending August 27, because she had excessive earnings. The claimant is eligible to receive partial benefits for the week ending August 20. This matter is **Remanded** to the Claims Section to determine the amount of partial benefits the claimant is eligible to receive for the week ending August 20, 2011.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs