

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARK A WILSON**  
Claimant

**APPEAL NO. 09A-UI-17834-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 10-18-09**  
**Claimant: Appellant (1R)**

Section 96.4-3 – Able and Available  
871 IAC 24.23(26) – Same Hours and Wages

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the November 25, 2009, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on January 7, 2010. The claimant did participate. The employer did participate through Leah Hefel, Human Resources Manager.

**ISSUE:**

Is the claimant still employed at the same hours and wages?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a night crew stocker part time beginning September 25, 2007 through date of hearing as he remains employed. Since April of 2008 the claimant has been scheduled to work only one shift per week. The shift is usually seven hours but can be longer if there are more products to be stocked. The claimant was never guaranteed any more than one shift per week.

The claimant worked for another employer in the state of Illinois who has not reported wages in Iowa for him. There has been no fact-finding investigation regarding the claimant's employment or separation from his Illinois employer.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work 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 96.19, 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".

871 IAC 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 has been working only one shift per week at Hy-Vee for over eighteen months. He was never guaranteed any more than one shift per week since April 2008. Under these circumstances the claimant is still employed at the same hours and wages for Hy-Vee and is thus not eligible for benefits from Hy-Vee. Accordingly, benefits are denied from Hy-Vee.

**REMAND:** The separation issue regarding the claimant's Illinois employer delineated in the findings of fact is remanded for an initial review and determination.

**DECISION:**

The November 25, 2009, reference 02, decision is affirmed. The claimant is not able to work and available for work effective October 18, 2009. Benefits are denied.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/css