

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WENDY A LOROM
Claimant

APPEAL NO. 10A-UI-06476-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

**Original Claim: 03/21/10
Claimant: Respondent (2/R)**

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Hy-Vee (employer) appealed a representative's April 22, 2010 decision (reference 02) that concluded Wendy Lorom (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 17, 2010. The claimant participated personally. The employer was represented by Tim Speir, Employer Representative, and participated by Tiffany Yoder, Human Resource Manager.

ISSUE:

The issue is whether the claimant is available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant worked for the employer from November 5, 2008, to the present. She was scheduled 3 to 18 hours per week. During her employment, the claimant was available nights and weekends. She changed her availability so that she could work days until 5:00 p.m. The change was so she could take her child to and from school. The employer complied, but there were fewer daytime hours available. The claimant filed for unemployment insurance benefits with an effective date of March 21, 2010. The claimant asked not to work on March 11, and 13; April 15, and 20; May 3, 19, 20, and 25; June 2, 8, and 10. The employer complied with the claimant's request for days off. The claimant took time off because of medical appointments for her son, daughter, and self, and due to lack of transportation.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant is not able and available for work during weeks she limited her hours.

871 IAC 24.23(16) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

When an employee requests and is granted time off, she is considered to be unavailable for work. The claimant changed her availability and requested a reduction of her hours. The employer granted her request. The change in hours was initiated by the claimant. She is considered to be unavailable for work from March 21, 2010. The claimant is disqualified from receiving unemployment insurance benefits from March 21, 2010, due to her unavailability for work.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received benefits since filing the claim herein. Pursuant to this decision, those benefits may now constitute an overpayment. The issue of the overpayment is remanded for determination.

DECISION:

The representative's April 22, 2010 decision (reference 02) is reversed. The claimant is disqualified from receiving unemployment insurance benefits, because she is not available for work with the employer. The issue of the overpayment is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw