

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHERRY K MORITZ
Claimant

APPEAL NO. 15A-UI-05180-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 01/11/15
Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Sherry Moritz filed a timely appeal from the April 28, 2015, reference 03, decision that denied benefits for the three-week period of March 8-28, 2015, based on an Agency conclusion that Ms. Moritz was on vacation and not available for work within the meaning of the law. After due notice was issued, a hearing was held on June 8, 2015. Ms. Moritz participated. The employer did not respond to the hearing notice instructions to provide a number for the hearing and did not participate. The hearing in this matter was consolidated with the hearing in appeal number 15A-UI-05181-JTT. The administrative law judge took official notice of the agency's administrative record of wages reported by or for the claimant and benefits disbursed to the claimant (DBRO).

ISSUES:

Whether the claimant was available for work during the three-week period of March 8-28, 2015.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Sherry Moritz has been employed with Hy-Vee during two distinct periods. The first period of employment ended in September 2013, when Ms. Moritz voluntarily quit to accept other full-time employment. The more recent period of employment commenced in January 2014. Ms. Moritz continues in that employment at a part-time cashier. Since April 2014, Ms. Moritz's wage is \$9.00 per hour. Prior to that, Ms. Moritz's hourly wage for the Hy-Vee employment was \$8.75.

After Ms. Moritz began the new part-time employment with Hy-Vee in January 2014, she got a second job at a doctor's office on March 2014. Ms. Moritz worked Mondays and Thursdays at the doctor's office. While she worked at the doctor's office, her availability for work at Hy-Vee was 6:30 a.m. to 6:00 p.m., Tuesday, Wednesday and Friday. The employment with the doctor's office ended in November 2014. At that point, Ms. Moritz notified Hy-Vee that she was also available for work on Mondays and Thursdays during the hours of 6:30 a.m. to 6:00 p.m.

Ms. Moritz established a claim for benefits that was effective January 11, 2015. Workforce Development calculated her weekly benefit amount at \$235.00. Since Ms. Moritz established her claim, she has reported wages and has received benefits as follows:

<u>Benefit week end date</u>	<u>Wages reported</u>	<u>Benefits paid</u>
01/17/15	88.00	205.00
01/24/15	44.00	235.00
01/31/15	144.00	149.00
02/07/15	97.00	196.00
02/14/15	159.00	134.00
02/21/15	100.00	193.00
02/28/15	111.00	182.00
03/07/15	207.00	86.00
03/14/15	80.00	213.00
<u>03/21/15</u>	<u>.00</u>	<u>235.00</u>
<u>03/28/15</u>	<u>119.00</u>	<u>174.00</u>
04/04/15	68.00	225.00
04/11/15	162.00	131.00
04/18/15	89.00	204.00
04/25/15	160.00	133.00
05/02/15	177.00	116.00 (Offset)
05/09/15	186.00	107.00 (Offset)
05/16/15	256.00	.00
05/23/15	139.00	154.00 (Offset)

The present case concerns Ms. Moritz's availability for work only during the three-week period of March 8-28, 2015. Those three weeks are underlined above.

During the week that ended March 14, 2015, Ms. Moritz was scheduled for four shifts at Hy-Vee. Ms. Moritz worked Monday and Wednesday of that week, 6:30 to 11:00 a.m., for a total of nine hours. Ms. Moritz called in sick for shifts on Thursday and Friday of that week because she had a sinus infection. Ms. Moritz made two new job contacts that week.

During the week that ended March 21, 2015, Ms. Moritz was not available for work at Hy-Vee because she was attending to family business. Ms. Moritz did make two new job contacts.

During the week that ended March 28, 2015, Ms. Moritz was not available for work with Hy-Vee on Monday or Tuesday, because she was attending to family business. On Wednesday, Ms. Moritz worked for two hours and was sent home early because business was slow. On Thursday, Ms. Moritz worked the six-hour that Hy-Vee made available to her. Ms. Moritz made two job contacts.

REASONING AND CONCLUSIONS OF LAW:

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 § 96.19,

subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1)a and (2) provide:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(1) and (29) provide:

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

(1) An individual who is ill and presently not able to perform work due to illness.

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

Ms. Moritz did not meet the availability requirement during the week that ended March 14, 2015. She was scheduled for four shifts, but only appeared for two. She was absent from the other two due to illness. Ms. Moritz was not available for weekend work. With the days she missed and being unavailable for weekend work, Ms. Moritz was not available for work during the majority of the week and, according, is not eligible for benefits for that week.

Ms. Moritz did not meet the availability requirement during the week that ended March 21, 2015 because she took the entire week off to attend to personal business. Ms. Moritz is not eligible for benefits for that week.

During the week that ended March 28, Ms. Moritz was not available for work on Monday or Tuesday because she was attending to personal business. Ms. Moritz performed work on two other days that week when Hy-Vee had work for her. Given Ms. Moritz's lack of weekend availability and her unavailability for work during two additional days that week, Ms. Moritz was not available for work during the majority of the week and, accordingly, not eligible for benefits.

Ms. Moritz did not meet the work availability requirement during the three-week period of March 8-28, 2015 and is not eligible for benefits for that three-week period.

DECISION:

The April 28, 2015, reference 03, decision is affirmed. The claimant did not meet the work availability requirement during the three-week period of March 8-28, 2015 and is not eligible for benefits for that three-week period.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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