

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

**TINA L DOWDY
230 W 2ND ST APT #4
SPENCER IA 51301**

APPEAL NO: 09A-UI-19002-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**HY-VEE INC
c/o UNEMPLOYMENT INSURANCE SVCS
PO BOX 7072
LEE'S SUMMIT MO 64064-7072**

APPEAL RIGHTS:

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

***Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.

That an appeal from such decision is being made and such appeal is signed.

The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TINA L DOWDY
Claimant

APPEAL NO: 09A-UI-19002-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 11/15/09
Claimant: Appellant (5)

Section 96.4-3 – Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed a representative's December 15, 2009 decision (reference 02) that concluded she was not eligible to receive benefits because she was still working for the employer at the same hours and wages as she had been hired to work. A telephone hearing was held on January 29, 2010. The claimant participated in the hearing. Brandon Edmonds and Kelly Nieland appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant eligible to receive partial benefits?

Is the claimant able to and available for work?

FINDINGS OF FACT:

On August 4, 2008, the employer hired the claimant to work part time primarily as an evening cashier and secondarily as an overnight stocker. The employer wanted the claimant to work about 25 hours a week.

The first month of the claimant's employment, she worked more than 25 hours a week. After the claimant began working she discovered she had arthritis in her knees. In September 2008, the claimant gave the employer a doctor's note indicating she could not work more than six hours a day. On October 23, 2008, the claimant gave the employer another work restriction. This restriction informed the employer that the claimant could not work as a cashier because of an anxiety disorder.

The employer hired the claimant to primarily work as a cashier. The employer did not have enough stocking hours to assign to the claimant to replace her cashier scheduled hours. In an attempt to give her more hours, the employer asked the claimant if she could work in the kitchen or deli. The claimant could not work in this department because of her anxiety disorder.

The claimant still works for the employer, but she only accepts work as stocker. Before the claimant established her claim for benefits, the week of November 15, her doctor limited her to working four hours a day instead of the six she had been allowed to work. As of January 29, 2010, the claimant continues to work for the employer.

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 section 96.4.3. The evidence shows the claimant is not working as many hours as the employer hired her to work in August 2008. This reduction, however, has been the result of the claimant's work restrictions her doctor has imposed for health-related reasons. These restrictions have unduly limited the work the claimant can do for the employer. Instead of discharging the claimant because she is unable to perform the work she was hired to do, the employer schedules her for as many stocking hours as the employer has available. The claimant's work restrictions have meant the employer changed the claimant's job duties and have given her a tailor-made job. The evidence shows that as a result of her work restrictions, the claimant is not eligible to receive benefits because her work restrictions have unduly limited her ability to and availability for work. As of November 15, 2009, the claimant is not eligible to receive benefits.

DECISION:

The representative's December 15, 2009 decision (reference 02) is modified, but the modification has no legal consequence. The claimant is not working the same hours that the employer hired her to work in August 2008. The change in her hours and job duties is the result of the claimant's restricted or limited ability to and availability for work. As a result of the claimant not being able to and available for the hours and work the employer hired her to do, as of November 15, 2009, she is not eligible to receive partial benefits.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs