

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HARVEY J HURSH
Claimant

APPEAL NO. 07A-UI-01738-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 01/07/07 R: 03
Claimant: Respondent (4)

Section 96.4(3) – Able and Available
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Hy-Vee, Inc. filed an appeal from a representative's decision dated February 12, 2007, reference 01, which held that Harvey Hursh was available for work and that the employer's account would not be relieved of charges. After due notice was issued, a hearing was held by telephone on March 6, 2007. Mr. Hursh participated personally. The employer participated by Brock Sands, Manager of Perishables, and Shelley Schmidt, Bakery Manager. The employer was represented by David Williams of Talx Corporation.

ISSUE:

At issue in this matter is whether Mr. Hursh satisfied the availability requirements of the law as of January 7, 2007.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Hursh has been employed by Hy-Vee, Inc. since August 8, 2004. He was hired to work part time as a bakery clerk with no guarantee of any specific number of hours per week. In June of 2006, he requested that he not be scheduled for any more than 24 hours each week. The employer scheduled him for at least 20 to 24 hours each week thereafter.

Mr. Hursh filed a claim for job insurance benefits effective January 7, 2007 after he viewed the work schedule for the week beginning January 8, 2007. He was only scheduled for 11 hours when he first looked at the schedule. He was advised by the bakery manager that a mistake had been made in making out the schedule and an additional 11 hours were added to his schedule for the week of January 8. Since filing his claim, there has been only one week in which Mr. Hursh worked less than 20 hours. He worked 18.8 hours the week beginning January 29.

REASONING AND CONCLUSIONS OF LAW:

When Mr. Hursh initially filed his claim for job insurance benefits, he was under the belief that his hours had been reduced. That was not the case as his hours were restored the week he filed his claim. The administrative law judge must determine if he was eligible for benefits for any week after filing his claim. With the exception of the week beginning January 29, he has always worked at least 20 hours each week since filing his claim. Working as few as 20 hours per week is consistent with Mr. Hursh's expectations of part-time employment. An individual who is still employed in a part-time job under the same terms and conditions as hired does not satisfy the availability requirements of Iowa Code section 96.4(3). See 871 IAC 24.23(26).

The administrative law judge appreciates that the employer's part-time workers are not guaranteed a minimum number of hours each week. However, consideration must be given to the worker's history of work hours. Mr. Hursh almost always worked at least 20 hours per week after June of 2006 when he requested no more than 24 hours each week. Therefore, it was a reasonable expectation that he would continue to receive at least 20 hours each week. The administrative law judge concludes that Mr. Hursh's hours were reduced the week beginning January 29, 2007. Therefore, he is entitled to benefits for the week as he only worked 18.8 hours.

Mr. Hursh received job insurance benefits for the weeks ending January 13, January 20, and January 27, 2007. Based on the decision herein, the benefits received, \$139.00, now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated February 12, 2007, reference 01, is hereby modified. Mr. Hursh is denied benefits for the period January 7 through January 27, 2007 as he was still employed in his part-time job. Benefits are allowed for the week ending February 3, 2007 as he was working a reduced workweek. Benefits are denied effective February 4, 2007 and until such time as Mr. Hursh satisfies Workforce Development that he is again available for work. Mr. Hursh has been overpaid \$139.00 in job insurance benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs