

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA M WOLFSKILL
Claimant

HY-VEE INC
Employer

APPEAL NO: 13A-UI-02466-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/08/12
Claimant: Appellant (1)

Section 96.4-3 – Able and Available
871 IAC 24.23(1) – Unable to Work/Illness

STATEMENT OF THE CASE:

The claimant appealed a department decision dated February 22, 2013, reference 05, that held she was not eligible for benefits for the four weeks ending January 26, 2013, because she was unable to perform work due to illness. A telephone hearing was held on March 27, 2013. The claimant participated. Julia Church, Hearings Coordinator, and Caleb Cork, Manager, participated for the employer. Employer Exhibit One was received as evidence.

ISSUE:

Whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The claimant worked for the employer as a part-time cashier at a Windsor Heights store location beginning October 29, 2012. She filed a UI claim effective July 8, 2012 and an additional claim effective December 23 in respect for a former employer.

She filed a claim for the week ending December 29 and reported wages of \$272.00 from the employer. Her WBA is \$119.00. She did not receive a UI benefit due to earning excessive wages.

Claimant was scheduled to work during a period from December 30 thru January 26, 2013. She suffered an ear infection and her doctor recommended she should not work. She provided doctor excuses to the employer and did not work.

Claimant decided to enroll at the Barber College on January 27 to begin February 5. She gave a new work schedule to the employer that stated she could not work Tuesday, Wednesday and Saturday, limiting her hours to 7:00 p.m. to 11:00 p.m. on Thursday, Fridays and anytime on Sunday or Monday. She also limited work to only four hours a day when she had worked some eight-hour days. This work schedule limited claimant's availability to work for the employer.

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 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(1) provides:

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.

The administrative law judge concludes that the claimant is not eligible for benefits the four-week period ending January 26, 2013, because she was unable to perform work due to illness.

The employer had part-time work scheduled for claimant, but she did not work due to her ear infection.

DECISION:

The department decision dated February 22, 2013, reference 05, is affirmed. The claimant is not eligible for benefits the four weeks ending January 26, 2013 because she was unable to perform work due to illness.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs