

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

COLLEEN K COLON-DANIEL
Claimant

APPEAL NO. 11A-UI-02353-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 01/02/11
Claimant: Appellant (4)

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the representative's decision dated February 22, 2011, reference 01, denying benefits effective January 1, 2011 upon a finding that the claimant did not meet the availability requirements of the law due to incarceration. After due notice, a telephone hearing was held on March 23, 2011. The claimant participated personally. The employer participated by Mr. John Fiorelli, Hearing Representative and witness, Mr. Steve Jeffry, Assistant Store Director. Employer's Exhibits One through Four were received into evidence.

ISSUE:

At issue in this matter is whether the claimant is able and available for work within the meaning of the Employment Security Law.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Colleen Colon-Daniel began employment with Hy-Vee Incorporated in March of 2005 and most recently worked as a part-time cashier averaging 20 hours of work per week. Ms. Colon-Daniel last worked on December 26, 2010.

The claimant was incarcerated on December 28, 2010 and charged with possession of controlled substances and drug paraphernalia. Ms. Colon-Daniel did not report for scheduled work on December 28, 2010 and did not call in and notify the employer of the reason for her absence. The claimant called off work on December 29 and December 31, 2010. Ms. Colon-Daniel was released from jail but was subsequently re-incarcerated on February 2, 2011 and was incarcerated from March 3 through March 7, 2011 based upon additional criminal charges that were brought forward.

The claimant had been suspended from work effective January 3, 2011. The employer will make a decision about Ms. Colon-Daniel's continuing employment after the claimant's trial on the charges pending against her. The claimant has pled not guilty to the charges.

The record does not reflect that Ms. Colon-Daniel has been incarcerated again since March 7, 2011. The claimant has contacted perspective employers seeking temporary or new employment each week since being released on March 7, 2011.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant is able and available for work.

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".

Inasmuch as the hearing record establishes that Ms. Colon-Daniel had been arrested and re-arrested for various criminal infractions from the time that she opened her claim for unemployment insurance benefits on January 2, 2011 through March 7, 2011 the administrative law judge concludes that the claimant has not been available for work and thus is ineligible to receive unemployment insurance benefits.

The evidence in the record establishes, however, that Ms. Colon-Daniel has not been re-arrested or incarcerated since March 7, 2011 and that the claimant has actively and earnestly sought temporary or new employment by contacting perspective employers each week. The hearing record does not establish that the claimant's legal issues prevent her from accepting new or temporary employment in the general occupation of fields that are available in her geographic area. The administrative law judge thus concludes that Ms. Colon-Daniel has established that she is available for work as of March 7, 2011 and eligible to receive unemployment insurance benefits providing that she meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated February 22, 2011, reference 01, is affirmed as modified. The claimant was not available for work from January 1, 2011 through March 7, 2011 and is ineligible to receive unemployment insurance benefits. The claimant is potentially eligible to

receive unemployment insurance benefits after March 7, 2011 providing that she meets all other eligibility requirements of Iowa law each week that she claims unemployment insurance benefits.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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