

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TARA EDWARDS
Claimant

APPEAL NO: 14A-UI-03620-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 03/09/14
Claimant: Appellant (5)

Iowa Code § 96.4(3) – Able to and Available for Work

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's April 2, 2014 determination (reference 01) that held the claimant ineligible to receive benefits as of March 9, 2014, because she was still employed at the same hours and wages that the employer hired her to work. The claimant participated at the April 24 hearing. Ajah Anderson, a representative with Corporate Cost Control, Inc., appeared on the employer's behalf. Randy Kruse, the store director, and Bill Detweiler, the human resource manager, testified on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes that while the claimant is unemployed, she is not eligible to receive benefits because she did not establish she was able to and available for work with her work restrictions and experience.

ISSUES:

Is the claimant able to and available for work?

Is the claimant partially unemployed?

FINDINGS OF FACT:

The claimant started working for the employer in March 2001. The claimant was working full time as the catering manager. The last day the claimant worked as a catering manager was March 1, 2014. As the result of a non-work-related health issue, the claimant's doctor gave her work restrictions on March 4.

The work restrictions indicated she was unable to do very little physical labor and was unable to do any repetitive activity such as bending, serving, reaching, and checking. Based on these work restrictions, the employer did not have any work for the claimant to do.

With her work restrictions, the claimant is capable of answering the phone, taking phone orders, sending emails or clerical work that allows her to sit. The claimant has not recently performed clerical work on a full or part-time basis.

The claimant established a claim for benefits during the week of March 9, 2014. The claimant established the claim because the employer does not have any work that can accommodate her work restrictions. The claimant has not worked for the employer since she gave the employer her work restrictions.

REASONING AND CONCLUSIONS OF LAW:

The representative's apparent reliance on Iowa Admin. Code r. 871-24.23(26) is misplaced. That rule states that when a claimant is still employed in a part-time job at the same hours and wages as hired and is **NOT** working a reduced workweek, a claimant is not partially unemployed. In this case, since March 9, 2014, the claimant has **NOT** worked any hours. She is definitely **unemployed**. Iowa Code § 96.19(38). The issue in this case is with her current work restrictions whether she is able to and available for work.

Each week a claimant files a claim for benefits, she must be able to and available for work. Iowa Code § 96.4(3). Since the claimant has no real clerical experience, her work restrictions require her to look for a tailor-made job. For unemployment insurance purposes the claimant did not establish she is able to and available for work. As of March 9, 2014, she is not eligible to receive benefits.

DECISION:

The representative's April 2, 2014 determination (reference 01) is modified, but the modification has no legal consequence. As of March 9, 2014, the claimant is unemployed, but she is not eligible to receive benefits because she did not establish she is able to work anything other than a tailor-made job.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs