

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRANDON WESLEY**  
Claimant

**APPEAL NO: 09A-UI-16684-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 10-04-09**  
**Claimant: Appellant (1)**

Section 96.4-3 – Able and Available for Work  
Section 96.4-3 – Same Hours and Wages

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the October 30, 2009, reference 03, decision that denied benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 10, 2009. The claimant participated in the hearing with former Department Manager in the Chinese Food Kitchen. Kellie Nieland, Human Resources Manager and Scott Steinbeck, Department Manager in the Kitchen, participated in the hearing on behalf of the employer. The hearing notice incorrectly stated separation issues rather than “Whether the claimant is still employed at the same hours and wages” and the parties waived their right to notice on that issue. Employer’s Exhibits One, Two and Three were admitted into evidence.

**ISSUE:**

The issue is whether the claimant is still employed with the employer for the same hours and wages as contemplated in the original contract of hire.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired as a part-time kitchen clerk/cook for Hy-Vee December 9, 2009, and continues to be employed in that capacity. At the time of hire December 9, 2008, the claimant completed an Employee Availability Form stating he was available to start work from 11:00 a.m. or 11:30 a.m. until closing Monday through Thursday and was available to start work at 10:00 a.m. and work until closing Friday through Sunday (Employer’s Exhibit Three). The claimant gave the employer a note stating that, “Due to my girlfriend starting school and her sched (sic) getting changed I will no longer to be able (sic) to work afternoons or night (sic) effective Aug. 31 (Employer’s Exhibit One). The claimant testified his girlfriend is in school Monday through Thursday and studies on Friday and on the weekends he has activities with his family. Because he was not specific about what time he needed off work in the afternoon the employer was unsure how to schedule him. He told his manager he could not work from 2:00 p.m. to 5:00 p.m. or 2:00 p.m. to 9:00 p.m. He was mostly working 5:00 a.m. to noon or 7:00 a.m. or 8:00 a.m. until 2:00 p.m. but told the employer he could not work past 2:00 p.m.

The employer schedules part-time employees as needed due to business necessity. After another breakfast cook quit the employer hired another cook who began working some of "(the claimant's) morning hours." The claimant was also upset because he observed employees from other departments working in the kitchen on different occasions. The kitchen manager will schedule employees in other departments with open availability, especially when the claimant was not able to come in when called to work outside the schedule and did not sign up for extra hours because it was difficult for him to get childcare on short notice. He also wanted to work in the Chinese Kitchen area but because that schedule was made earlier than the kitchen schedule due to the kitchen's catering activities the Chinese Kitchen manager could not schedule him in her department. The employer is getting busier during the day now and the claimant's hours should increase.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is not working the same amount of hours because he has limited his availability.

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".

The claimant was hired as a part-time kitchen cook/clerk. There has been no separation from his part-time employment and the claimant is currently working for this employer. His hours have been decreased because he changed his availability August 31, 2009, from being able to start work at 11:00 a.m. or 11:30 a.m. and work until closing Monday through Thursday and 10:00 a.m. until closing Friday through Sunday to no longer being able to work afternoons or evenings, which are busy hours for the employer. The claimant has unduly limited his availability for work. Consequently, benefits must be denied.

**DECISION:**

The October 30, 2009, reference 03, decision is affirmed. The claimant has unduly limited his availability to work for the employer. Benefits are denied until such time as he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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