

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROBERT L CANNON
Claimant

APPEAL 19A-UI-02908-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALMART INC
Employer

OC: 07/22/18
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Admin. Code r. 871-24.23(26) – Availability Disqualifications Same Hours and Wages

STATEMENT OF THE CASE:

On April 8, 2019, the claimant filed an appeal from the April 2, 2019, (reference 09) unemployment insurance decision that denied benefits based on a determination that he was not able to and available for work effective March 17, 2019. The parties were properly notified about the hearing. A telephone hearing was held on April 26, 2019. Claimant participated and testified. Employer participated through Assistant Manager Megan Meyermann.

ISSUE:

Is the claimant able to work and available for work effective March 17, 2019?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on September 5, 1989 as a full-time sales associate. The employer defines a full-time employee as someone who is guaranteed to work at least 28 hours per week. Claimant was aware that he is only guaranteed 28 hours per week. Claimant's current hourly pay is \$17.52 and has not been reduced. In January claimant was scheduled only 24 hours one week. The same thing happened a few weeks later. Claimant has been working his regular full-time hours since at least March 1, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is not able to and available for work effective March 17, 2019. Benefits are withheld.

Iowa Code § 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".

Iowa Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(23) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

An individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. Claimant is working his regular full-time hours and has been since at least March 2019. Claimant generally works between 32 and 37 hours per week. This is enough to remove him from the labor market. The administrative law judge finds claimant was not available for work. Accordingly, benefits are withheld.

DECISION:

The April 2, 2019, (reference 09) unemployment insurance decision is affirmed. Claimant is not able to and available for work effective March 17, 2019. Benefits are withheld.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs