

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**PAKHONG PATHEUANGSIN**  
Claimant

**APPEAL NO. 20A-UI-04236-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WALMART INC**  
Employer

**OC: 03/22/20**  
**Claimant: Appellant (1)**

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Iowa Admin. Code ch. 871 r. 24.23(10) – Leave of Absence  
Iowa Code § 96.4-3 – Able and Available  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Federal Law PL 116-136 Sec. 2104 – Eligibility for Federal Pandemic Unemployment Compensation

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated May 15, 2020, reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on June 4, 2020. Claimant participated personally. Employer participated by Lori Meskimen. Employer was called at the number listed. The phone initially answered but then went into ringing for over two minutes without any answer. Therefore, employer failed to answer the phone when called and did not participate. Claimant's exhibits A-B were admitted into evidence.

**ISSUE:**

Whether claimant is able and available for work?

Whether claimant is on an approved leave of absence?

Whether claimant has been overpaid state unemployment benefits?

Whether claimant is eligible to receive Federal Pandemic Unemployment Compensation?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant has been working for employer for over a decade.

Claimant stated on March 14, 2020 she went to the hospital for treatment of a medical problem. The medical problem puts claimant at high risk for Covid. Claimant stated after a few days in the hospital, it was determined that she should stay away from work out of fear of contracting the disease with her weakened immune system. She shared this information with employer who agreed to keep claimant's job while she was away from work.

Claimant received multiple doctors' notes for this hearing. They recommended that claimant stay home for the foreseeable future.

Claimant has received state benefits in the amount of \$651.00 in this matter.

Claimant has received FPUC benefits in the amount of \$3,600.00 in this matter.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Admin. Code r. 871-24.23(10) provides:

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

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

Iowa Admin. Code r. 871-24.22(1)a 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.23(35) provides:

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

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

Iowa Code section 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from

any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Inasmuch as the illness is not work-related and the treating physician has not released the claimant to return to work, the claimant has not established the ability to work. Benefits are withheld until such time as the claimant obtains a full medical release to return to work.

Claimant has been overpaid state benefits in the amount of \$651.00 in this matter.

Claimant has been overpaid FPUC benefits in the amount of \$3,600.00 in this matter.

*Note to Claimant:* This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

**DECISION:**

The decision of the representative dated May 15, 2020, reference 01 is affirmed. Claimant is not eligible to receive unemployment insurance benefits, effective March 14, 2020 until claimant has obtained a release to return to work.

Claimant has been overpaid state benefits in the amount of \$651.00 in this matter.

Claimant has been overpaid FPUC benefits in the amount of \$3,600.00 in this matter.



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Blair A. Bennett  
Administrative Law Judge

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June 23, 2020  
Decision Dated and Mailed

bab/mh