

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

MARIE L ADKISSON
Claimant

APPEAL NO. 18A-UI-09903-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALMART INC
Employer

OC: 07/29/18
Claimant: Respondent (1)

Section 96.5-3-a – Refusal to Accept Suitable Work
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Walmart (employer) appealed a representative's September 19, 2018, decision (reference 03) that concluded Marie Adkisson (claimant) eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 12, 2018. The claimant participated personally. The employer participated by Angel Thompson, Unemployment Claims Process Lead. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant refused suitable work and whether she was able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant filed a claim for unemployment insurance benefits with an effective date of July 29, 2018. The claimant's average weekly wage during her highest quarter of wages was \$833.61.

On or about August 20, 2018, the employer offered the claimant a part-time job as a greeter. The job paid \$11.50 per hour and the claimant would work fifteen to twenty-four hours per week. In other words, she would earn \$172.50 to \$276.00 per week. The claimant refused the offer of work.

The claimant had pain in her feet and saw a doctor on August 21, 2018. Her physician did not restrict her from working. On September 11, 2018, her physician issued her work restrictions. The claimant was not allowed to stand for more than fifteen minutes each hour.

REASONING AND CONCLUSIONS OF LAW:

Before a claimant can be disqualified from receiving unemployment insurance benefits for refusing an offer of suitable work, the claimant must be able and available for work. 871 IAC 24.24(4). The claimant was able and available for work.

Iowa Admin. Code r. 871-24.23(1) provides:

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

- (1) An individual who is ill and presently not able to perform work due to illness.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). When an employee has a medical issue and unable to perform work, she is considered to be unavailable for work. The claimant had no restrictions through September 11, 2018. Then she was released to work with restrictions by her physician. She is considered to be available for work because her physician stated she was able and available for work. The claimant is not disqualified from receiving unemployment insurance benefits.

For the reasons that follow the administrative law judge concludes the claimant refused unsuitable work.

Iowa Code section 96.5(3)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

3. Failure to accept work. If the department finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the department or to accept suitable work when offered that individual. The department shall, if possible, furnish the individual with the names of employers which are seeking employees. The individual shall apply to and obtain the signatures of the employers designated by the department on forms provided by the department. However, the employers may refuse to sign the forms. The individual's failure to obtain the signatures of designated employers, which have not refused to sign the forms, shall disqualify the individual for benefits until requalified. To requalify for benefits after disqualification under this subsection, the individual shall work in and be paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

- a. (1) In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, prior training, length of unemployment, and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and any other factor which the department finds bears a reasonable relation to the purposes of this paragraph. Work is suitable if the work meets all the other criteria of this paragraph and if the gross weekly wages for the work equal or exceed the following percentages of the individual's average weekly wage for insured work paid to the individual during that quarter of the individual's base period in which the individual's wages were highest:

(a) One hundred percent, if the work is offered during the first five weeks of unemployment.

(b) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.

(c) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.

(d) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

(2) However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

The work was offered within one week of the claimant's unemployment and was required to provide the claimant wages one hundred percent of those paid to the claimant during the highest quarter of her base period. The evidence fails to establish that the claimant would have received at least one hundred percent of her average weekly wages during her highest quarter of earnings. Based on the factors found in Iowa Code Section 96.5-3-a, the work offered to the claimant was not suitable work. The claimant is not disqualified from receiving unemployment insurance benefits.

DECISION:

The representative's September 19, 2018, decision (reference 03) is affirmed. The claimant is able and available for work. She is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs