

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CECILY E BARNETT
Claimant

APPEAL 19A-UI-08808-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALMART INC
Employer

**OC: 10/06/19
Claimant: Respondent (2)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

On November 8, 2019, the employer filed an appeal from the October 29, 2019, (reference 01) unemployment insurance decision that allowed benefits based on a reduction in hours. The parties were properly notified about the hearing. A telephone hearing was held on December 4, 2019. Claimant participated. Employer participated through assistant manager Karla Resendiz. Employer's Exhibit 1 was received.

ISSUES:

Is the claimant eligible to receive partial benefits?
Is the claimant able to and available for work?
Is the claimant still employed at the same hours and wages?
Is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on March 28, 2017. Claimant began as a temporary employee and was hired as a permanent, part-time employee within a few months. Employer considers an employee who works less than 34 hours a week to be part time.

At the beginning of claimant's employment, she was available during daytime hours Monday through Friday. Claimant regularly worked 32.5 hours per week, but employer never guaranteed claimant a set amount of hours per week.

In August 2019, claimant reduced her availability to three days per week and requested to be scheduled only 24 hours per week.

From that point on, employer has scheduled claimant for reduced hours ranging from two to 24 hours per week. Employer informed claimant it could schedule her for more hours if she increased her availability.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially unemployed effective October 6, 2019.

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".

Iowa Code section 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Iowa Admin. Code r. 871-24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

In this case, claimant is still employed as a part-time worker, as contemplated in the original contract of hire. Employer never guaranteed claimant a certain number of hours per week and continues to offer claimant part-time employment. Therefore, claimant is not considered unemployed. Furthermore, the reduction in hours was triggered by claimant reducing her availability for work. So even if claimant were partially or totally unemployed, it is due to her own limitation for work when work is available.

Claimant is not eligible for unemployment insurance benefits effective October 6, 2019. Because claimant is not eligible for benefits, there is no issue regarding whether employer's account should be charged.

DECISION:

The October 29, 2019, (reference 01) unemployment insurance decision is reversed. The claimant is not partially unemployed and benefits are denied.



Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

December 5, 2019
Decision Dated and Mailed

cal/scn