

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TIM P RAHTO
Claimant

WALMART INC
Employer

APPEAL 21A-UI-17679-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/23/21
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(10) – Able & Available – Availability Disqualifications

STATEMENT OF THE CASE:

On August 10, 2021, the claimant filed an appeal from the August 4, 2021, (reference 01) unemployment insurance decision that denied benefits based upon a finding that claimant was on an approved leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on October 4, 2021. Claimant Tim P. Rahto participated personally. Employer Wal-Mart, Inc. participated through store manager Kelly Boring and stocking coach Kelby Johnson. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant able to and available for work?
Is the claimant on a voluntary leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on September 1, 2016. Claimant worked for employer as a part-time electronics associate until August 31, 2021, when he quit.

Claimant requested a leave of absence from employer for bereavement. The request was granted. Claimant was on the leave of absence from May 16, 2021, through June 25, 2021. Claimant returned to work on July 1, 2021, at the same hours and wages as prior to the leave of absence. Continuing work was available.

Claimant filed his initial claim for benefits after he was separated from employment from his full-time employer, Bisso Technologies, LLC. There has been no initial investigation or decision regarding the issue of separation from employment from Bisso Technologies or this employer, Wal-Mart.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective May 23, 2021.

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 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.

An individual claiming benefits has the burden of proof that he or she is able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. Here, claimant was on a leave of absence due to bereavement. Claimant has not established he is able to and available for work. Accordingly, claimant is not eligible for unemployment insurance benefits.

DECISION:

The August 4, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant is not available for work effective May 23, 2021, and regular, state-funded unemployment insurance benefits are denied.



Stephanie Adkisson
Administrative Law Judge

October 06, 2021
Decision Dated and Mailed

sa/ol