

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JACQUELINE EBERHARDT
Claimant

APPEAL 21A-UI-13199-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALMART INC.
Employer

**OC: 02/21/21
Claimant: Appellant (1R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871—24.23(10) – Voluntary Leave of Absence

STATEMENT OF THE CASE:

The claimant, Jacqueline Eberhardt, filed an appeal from the May 27, 2021, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was on an approved leave of absence from employment with the employer, Walmart, Inc. The parties were properly notified of the hearing. A telephone hearing was held on September 7, 2021. The claimant participated personally. The employer could not be reached at the phone number provided and did not participate. Claimant's Exhibits A and B were admitted. 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 an approved leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a sales associate from April 3, 2018, until this employment ended on July 1, 2021, when she resigned.

The last day claimant performed work for the employer was February 19, 2021. After that date, claimant went out on a short medical leave of absence, until February 22, 2021, for a condition that was not established to be work-related. She was aware that she needed a doctor's note releasing her to return to work in order to return to work after February 22, 2021. Claimant struggled to find a physician who would fill out the employer's return-to-work paperwork. Ultimately, she was released by her physician to return to work on April 1, 2021, with restrictions. The restrictions were that claimant was prohibited from lifting, carrying, using stairs, or climbing, and required a rest break every two hours. The employer told claimant that it would look for a position fitting her restrictions.

On May 30, 2021, the employer's leave and accommodations administrator called claimant and told her that accommodations had been approved. Thereafter, sometime in June 2021,

claimant worked part of one day in a department, but then was told that the job to which she would be returning would not comply with her restrictions.

In June 2021, claimant requested that her doctor loosen her lifting restriction to a maximum of 15 pounds. However, the employer did not offer claimant additional work after that time. Claimant felt that the employer should have had work she could do. Formerly, after work-related injury, the employer had her work as either a door greeter or in the money center. She felt the employer could have done the same in spring 2021.

On July 1, 2021, claimant resigned her employment. The issue of separation is not before the administrative law judge.

Claimant filed weekly claims from the week ending February 27, 2021, through the week ending June 26, 2021.

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 February 21, 2021, through the week of June 20, 2021, after which time she ceased filing weekly claims.

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—24.23(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—24.23(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.

Claimant requested and was granted a leave of absence. In doing so, claimant made herself unavailable for work during this time. Claimant is therefore not eligible for benefits during this period. She was not released to return to any work until April 1, 2021. This was not the fault of the employer, but rather due to claimant having trouble locating a physician to release her to return to work.

When the physician did release claimant to work for her non-work-related condition on April 1, 2021, she was released with work-related restrictions. While she may be able to perform light work duties, the employer is not obligated to accommodate a non-work related medical condition, and since she has not been released to perform her full work duties, she is not considered able to or available for work.

Though claimant's employment ended on July 1, 2021, she ceased filing weekly claims as of the week of June 20, 2021.

DECISION:

The May 27, 2021 (reference 01) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective from February 21, 2021, through the week of June 20, 2021.

REMAND:

The issue of separation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

The issue of overpayment is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.



Alexis D. Rowe
Administrative Law Judge

September 14, 2021
Decision Dated and Mailed

ar/mh