

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

GLENN HUNTER
Claimant

WALMART INC
Employer

APPEAL NO. 19A-UI-09159-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/27/19
Claimant: Respondent (4R)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.19(38)(b) – Partial Unemployment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 14, 2019, reference 01, decision allowed benefits to the claimant effective October 27, 2019 provided he was otherwise eligible, based on the deputy's conclusion that the claimant was able to work, was available for work, but was partially unemployed. After due notice was issued, a hearing was held on December 16, 2019. Claimant Glenn Hunter did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. Jodi Wilson represented the employer. The administrative law judge took official notice of the following Agency administrative records: DBRO, KCCO and WAGEA.

ISSUES:

Whether the claimant has been able to work and available for work since he established the original claim for benefits that was effective October 27, 2019.

Whether the claimant has been partially unemployed since he established the original claim for benefits that was effective October 27, 2019.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Glenn Hunter established an original claim for unemployment insurance benefits that was effective October 27, 2019. Iowa Workforce Development set Mr. Hunter's weekly benefit amount at \$276.00. At all relevant times, Mr. Hunter has been attached to employment with Walmart, Inc. After Mr. Hunter established his original claim for benefits, he did not immediately commence making weekly claims and his claim lapsed. Mr. Hunter reactivated his claim effective November 10, 2019 and commenced making weekly claims. Mr. Hunter made consecutive weekly claims for the four weeks between November 10, 2019 and December 7, 2019. Mr. Hunter then discontinued his claim for benefits. During the four weeks for which Mr. Hunter made week claims he reported wages and received benefits as follows:

<u>Week Ending Date</u>	<u>Wages Reported</u>	<u>Benefits Paid</u>
11/16/19	289.00	56.00
11/23/19	264.00	81.00
11/30/19	314.00	0.00
12/07/19	300.00	0.00

Mr. Hunter has been employed by Walmart since 2009 and became a full-time employee in 2012.

Mr. Hunter was a full-time greeter at the Mount Pleasant Walmart until the employer eliminated that position in April 2019. During that time, Mr. Hunter provided the employer with an availability schedule wherein he indicated he was available for work seven days a week between the hours of 5:00 a.m. and 5:00 p.m.

Effective April 20, 2019, Mr. Hunter became a full-time maintenance associate at the Mount Pleasant store. Mr. Hunter maintained the same availability schedule.

From May 4, 2019 until August 2, 2019, the employer reassigned Mr. Hunter to assist with a temporary remodel project at the Mount Pleasant store. During that time, Mr. Hunter's full-time work hours were consistently 7:00 a.m. to 4:00 p.m. Upon completion of Mr. Hunter's work on the Mount Pleasant remodeling assignment, the employer assigned Mr. Hunter to assist with a temporary remodeling assignment at another store. Mr. Hunter's full-time work hours on the new remodel assignment continued to be 7:00 a.m. to 4:00 p.m.

Effective November 1, 2019, the employer elected to end Mr. Hunter's work on the other store's remodel project and returned him to the maintenance associate position at the Mount Pleasant store.

Mr. Hunter established his original claim for unemployment insurance benefits in response to the employer's decision not to provide him with full-time hours in the maintenance associate position. When Mr. Hunter returned to the employment, he initially preserved the same availability, 5:00 a.m. to 5:00 p.m. seven days a week.

Since February 17, 2019, Mr. Hunter's hourly wage has been \$11.22. From February 20, 2018 through February 16, 2019, Mr. Hunter's hourly wage was \$11.00.

During the week of November 10-16, 2019, the employer scheduled Mr. Hunter for 17.5 hours and Mr. Hunter used eight hours of vacation pay benefit. Aside from the vacation day, Mr. Hunter remained available for full-time work. Mr. Hunter's gross wages for the week totaled \$286.11.

On November 16, 2019, Mr. Hunter provided the employer with an updated availability schedule whereby he continued to be available for work between the hours of 5:00 a.m. and 5:00 p.m., but indicated he was not available for work on Tuesday and Wednesday.

During the week of November 16-23, 2019, the employer scheduled Mr. Hunter for 27 hours. Mr. Hunter remained available for full-time work. Mr. Hunter's gross wages for the week totaled \$302.94.

During the week of November 24-30, 2019, the employer scheduled Mr. Hunter to work 30 hours. Mr. Hunter remained available for full-time work. Mr. Hunter's gross wages for the week totaled \$336.60.

During the week of December 1-7, 2019, the employer scheduled Mr. Hunter to work 27.25 hours. Mr. Hunter remained available for full-time work. Mr. Hunter's gross wages for the week totaled \$305.74.

REASONING AND CONCLUSIONS OF LAW:

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. 871-24.22(2) 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(16) and (29) provide:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

...

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

Iowa Administrative Code rule 871-24.2(1)(g) provides as follows:

(g). No continued claim for benefits shall be allowed until the individual claiming benefits has completed a continued claim or claimed benefits as otherwise directed by the department.

(1) The weekly continued claim shall be transmitted not earlier than 8 a.m. on the Sunday following the Saturday of the weekly reporting period and, unless reasonable cause can be shown for the delay, not later than close of business on Friday following the weekly reporting period.

An individual shall be deemed partially unemployed in any week in which, 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. Iowa Code Section 96.19(38)(b).

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. Contribution rates based on benefit experience.

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

Because Mr. Hunter did not make a timely weekly claim for the benefit two weeks between October 27, 2019 and November 9, 2019, he did not meet the availability requirement for those weeks and not eligible for benefits for those weeks.

Mr. Hunter met the able and available requirements during each of the four week between November 10, 2019 and December 7, 2019. Mr. Hunter's November 16, 2019 notice to the employer that he would no longer be available for work on Tuesdays and Wednesdays did not unduly restrict his work availability and he continued to be available for full-time work scheduled any time be 5:00 a.m. and 5:00 p.m. during the other five days of the week.

The evidence in the record establishes that Mr. Hunter was partially unemployed during the week of November 10-16, 2019, during which time the employer provided him with less than full-time hours and Mr. Hunter's weekly wages did not exceed his \$276.00 weekly benefit amount plus \$15.00. Mr. Hunter is eligible for benefits for the week that ended November 16,

2019 provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Hunter for that week.

The evidence in the record establishes that Mr. Hunter was not partially unemployed during the three weeks between November 17, 2019 and December 7, 2019. Mr. Hunter was working reduced hours during those weeks, but his gross wages for each of those weeks exceeded his \$276.00 weekly benefit amount plus \$15.00. Mr. Hunter is not eligible for benefits for the three weeks between November 17, 2019 and December 7, 2019. The employer's account will not be charged for benefits paid for the week that ended November 23, 2019.

This matter will be remanded to the Benefits Bureau for entry of an overpayment decision regarding the \$81.00 in benefits the claimant received for the week that ended November 23, 2019.

DECISION:

The November 14, 2019, reference 01, decision is modified in favor of the employer as follows. The claimant did not make timely weekly claims for the two weeks between October 27, 2019 and November 9, 2019, and did not meet the availability requirement for those weeks, and is not eligible for benefits for those weeks. The claimant was able to work and available for work during the four benefit weeks between November 10, 2019 and December 7, 2019. The claimant was partially unemployed during the benefit week that ended November 16, 2019 and is eligible for benefits for that week, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant for the week that ended November 16, 2019. The claimant was not partially unemployed during the weeks that ended November 23, November 30, and December 7, 2019 because his gross wages exceed his weekly benefit amount plus \$15.00. The claimant is not eligible for benefits for the three weeks between November 17, 2019 and December 7, 2019.

This matter is remanded to the benefits bureau for entry of an overpayment decision regarding the \$81.00 in benefits the claimant received for the week that ended November 23, 2019.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn