

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ARTIS W WILSON
Claimant

WALMART INC
Employer

APPEAL 19A-UI-06883-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/30/19
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 August 28, 2019, the employer filed an appeal from the August 19, 2019, (reference 03) unemployment insurance decision that allowed benefits based on claimant's availability for work. The parties were properly notified about the hearing. A telephone hearing was held on September 23, 2019. Claimant did not register for the hearing and did not participate. Employer participated through member service manager Amber Speth. 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: The claimant was hired to work part-time as a member support associate. From July 14, 2019, going forward, employer did have part-time work available for claimant. Claimant did not work during the two weeks ending July 27, 2019, because she requested not to be scheduled to work. From July 28, 2019, going forward, claimant has worked part-time hours each week.

Claimant does not have other qualifying wages in her base period.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not eligible for benefits from July 14, 2019, going forward.

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:

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 was totally unemployed during the two weeks ending July 27, 2019. However, that was at claimant's request as she asked NOT to be scheduled that week. Therefore, claimant is considered not able to and available for work during the two weeks ending July 27, 2019, and is not eligible for benefits.

From July 28, 2019, going forward, claimant has worked part-time hours for employer each week, just as contemplated at the time of hire. Therefore, claimant is not considered partially unemployed during those weeks and is not eligible for benefits.

Because claimant is not eligible for benefits, the issue of whether employer should be charged for benefits is moot and will not be discussed further in this decision.

DECISION:

The August 19, 2019, (reference 03) unemployment insurance decision is reversed. The claimant is not able to and available for work from July 14, 2019, through July 27, 2019. Claimant is not partially unemployed effective July 28, 2019. Benefits are denied from July 14, 2019, going forward.

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

Decision Dated and Mailed

cal/scn