

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RANCHEOLUWA A DANGBOE
Claimant

APPEAL 17A-UI-09839-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

**OC: 12/11/16
Claimant: Appellant (3-R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2)f – Availability for Work - Part-time Worker/Student
Iowa Admin. Code r. 871-23.43(4)a – Supplemental Employment
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:

The claimant filed an appeal from the September 20, 2017, (reference 07) unemployment insurance decision that denied benefits based upon not being able to or available for work. The parties were properly notified about the hearing. A telephone hearing was held on October 11, 2017. Claimant participated through CTS Language Link French language interpreter. Employer participated through assistant manager Mike Kostboth.

ISSUES:

Is the claimant able to work and available for work effective August 20, 2017?
Is the claimant partially unemployed?
If so, is the employer's account liable for potential charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time deli worker through May 22, 2017. His last day of work was May 18, 2017. He was out of the country from May 22 to July 26, 2017, to attend to his ill mother. When he returned, he contacted Wal-Mart and was told to reapply for work. He reapplied for work and was hired to work part-time effective August 12, 2017.

He claimed benefits in the amount of \$854.38 for the three weeks-ending June 10, 2017, while out of the country. The separation from employment with Wal-Mart between June 19 and August 11, 2017, has not yet been addressed at the Benefits Bureau level.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes, the claimant is partially unemployed and this part-time employer is relieved of benefit charges.

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 Code section 96.7(2)a(2)(a), (b), and (c) provides:

2. *Contribution rates based on benefit experience.*

a. (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.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the

unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

Iowa Admin. Code r. 871-23.43(4)a provides in part:

(4) Supplemental employment.

a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relieved of benefit charges....

Iowa Admin. Code r. 871-24.22(2)f 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.

f. *Part-time worker, student--other.* Part-time worker shall mean any individual who has been in the employ of an employing unit and has established a pattern of part-time regular employment which is subject to the employment security tax, and has accrued wage credits while working in a part-time job. If such part-time worker becomes separated from this employment for no disqualifiable reason, and providing such worker has reasonable expectation of securing other employment during the same hours and for the same number of hours worked, no disqualification shall be imposed under Iowa Code section 96.4(3). In other words, if an individual is available to the same degree and to the same extent as when the wage credits were accrued, the individual meets the eligibility requirements of the law.

Because the claimant has other base-period wages with IAC Iowa City LLC and Seaton Management Solutions, and is currently employed part-time with Wal-Mart, he may be considered partially unemployed. Partial benefits may be allowed if he is otherwise eligible. Inasmuch as the current part-time employer is offering the same wages and hours as in the base period of employment and as contemplated at both dates of hire, no benefit charges shall be made to its account.

For any week of benefits claimed, claimant must report gross wages earned that week to establish whether or not he is eligible for partial unemployment benefits. Claimant was not entitled to benefits while out of the country during the three weeks-ending June 10, 2017.

DECISION:

The September 20, 2017, (reference 07) unemployment insurance decision is modified in favor of the respondent. The claimant is partially unemployed and benefits are allowed, provided he is otherwise eligible. The account of the current part-time employer, Wal-Mart (account number 168629) shall not be charged. Claimant was not entitled to \$854.38 for the three weeks-ending June 10, 2017, while he was out of the country.

If he is denied benefits based upon the separation from Wal-Mart, after he requalifies for benefits by earning ten times his weekly benefit amount, he may be able to file an additional claim during this claim year and file weekly continued claims to offset that potential overpayment amount.

REMANDS: The separation issue as delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination with notice and appeal rights to both parties.

The overpayment issue is remanded for calculation and determination with notice and appeal rights to claimant.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/scn