

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

FADIL RAHIMIC
Claimant

APPEAL 20A-UI-12672-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

WALMART INC
Employer

OC: 03/15/20
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 6, 2020, (reference 04) unemployment insurance decision that denied benefits based upon being able to and available for work for the week ending May 10, 2020. After due notice was issued, a telephone conference hearing was scheduled to be held on December 2, 2020. Claimant participated. Employer participated through Manager Veneissia Jones.

ISSUE:

Was the claimant able to work, available for work, and actively and earnestly seeking work the week ending May 10, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant started working as a part-time rotisserie worker for Wal-Mart in February 2017 until he was granted a leave of absence. Claimant is a single father of his two minor children.

The employer granted claimant's leave of absence on May 10, 2020. Claimant has not been available to work since Des Moines Public Schools shut down because it resulted in him lacking child care. On August 29, 2020, Claimant returned to work for the next three days. After August 31, 2020, claimant took another leave of absence because he still lacked adequate childcare. Claimant is physically able to perform this work. The employer would have had work available for claimant during this period.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant has not met his burden to show he is able to work and available for work, and made an earnest search for work for the period in question effective May 10, 2020.

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(1)a 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. *Illness, injury or pregnancy.* Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.22(2) provides:

Benefit 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 provides:

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

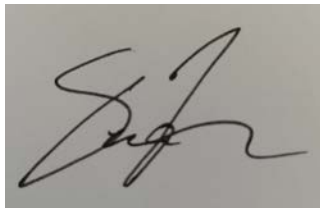
(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.

An individual claiming benefits has the burden of proof that he is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

While this administrative law judge is sympathetic to claimant's position, he cannot show he is available for work at this time. Claimant is disqualified from availability due to his lack of childcare. Accordingly, he is not eligible for unemployment insurance benefits.

DECISION:

The October 6, 2020, (reference 04) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective May 20, 2020. Benefits are denied.



Sean M. Nelson
Administrative Law Judge
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December 31, 2020
Decision Dated and Mailed

smn/scn