

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**KAREN M NETTLETON**

Claimant

**WALMART INC**

Employer

**APPEAL 20A-UI-00860-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/29/19**

**Claimant: Respondent (1R)**

---

Iowa Code § 96.19(38)b – Definitions – Total, partial unemployment

Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search

Iowa Code § 96.7(2)A(2) – Charges – Same base period employment

Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages

**STATEMENT OF THE CASE:**

Employer filed an appeal from the January 22, 2020 (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on February 24, 2020, at 2:00 p.m. Claimant participated. Employer participated through Stephanie Olson, Front End Coach. Claimant's Exhibits 1 – 8 were admitted. Official notice was taken of the administrative record.

**ISSUES:**

Whether claimant is eligible to receive partial benefits.

Whether the claimant is able to and available for work.

Whether claimant is still employed at the same hours and wages.

Whether employer's account is subject to charge.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began employment with Walmart, Inc. on June 24, 1992. In November 2019, employer reduced claimant's hours from 39 hours per week on average to 21 hours per week on average due to lack of work. Claimant's hourly wage was \$17.55. Claimant filed an original claim for benefits effective December 29, 2019 due to the reduction in scheduled hours. Claimant filed weekly benefit claims for the benefit weeks ending January 4, 2020 through February 1, 2020 and reported earnings for each of the weeks claimed. Claimant's employment with Walmart, Inc. ended on February 14, 2020. There has been no initial investigation and determination regarding claimant's separation from employment from Walmart, Inc.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was partially unemployed from December 29, 2019 until February 14, 2020 and benefits are allowed for that

period. Claimant is totally unemployed effective February 14, 2020 and benefits are allowed effective February 9, 2020 provided claimant is otherwise eligible.

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. 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 difference from the contract for hire, such claimant cannot be considered partially unemployed.

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) 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.

Since December 29, 2019, claimant has not been employed under the same hours and wages as contemplated at hire. Because claimant's level of employment is not consistent with her base-period wage history with this employer, claimant is considered partially unemployed. Claimant is eligible for partial benefits from December 29, 2019 until February 14, 2020, based upon reporting of weekly earnings. For whatever period the employer was not offering the same wages and hours as contemplated in the contract or terms of hire, it may be liable for benefit charges to its account. Since February 14, 2020, claimant has been totally unemployed. Benefits are allowed, provided claimant is otherwise eligible. The issue of whether claimant's separation is disqualifying will be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

**DECISION:**

The January 22, 2020 (reference 01) unemployment insurance decision is affirmed. Claimant was partially unemployed from December 29, 2019 until February 14, 2020; benefits are allowed for that period. Claimant is totally unemployed effective February 14, 2020; benefits are allowed provided claimant is otherwise eligible.

**REMAND:**

The issues of whether claimant's separation was disqualifying is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

---

Adrienne C. Williamson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

---

Decision Dated and Mailed

acw/scn