

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**CYNTHIA A HARTSON**  
Claimant

**APPEAL NO. 19A-UI-07850-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WALMART INC**  
Employer

**OC: 08/25/19**  
**Claimant: Appellant (2/R)**

Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Cynthia Hartson filed a timely appeal from the October 1, 2019, reference 02, decision that denied benefits effective August 25, 2019, based on the deputy's conclusion that Ms. Hartson requested and was granted a leave of absence, was voluntarily unemployed, and not available for work within the meaning of the law. After due notice was issued, a hearing was held on October 28, 2019. Ms. Hartson participated. The employer did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency's administrative records: DBRO and KCCO.

**ISSUES:**

Whether the claimant has been able to work and available for work since August 25, 2019.

Whether the claimant has been on a leave of absence that she requested and that the employer approved since August 25, 2019.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Cynthia Hartson established an original claim for benefits that was effective August 25, 2019. Iowa Workforce Development categorized Ms. Hartson as a group 3, job-attached claimant and waived the work search requirement. Ms. Hartson made weekly claims for the seven weeks between August 25, 2019 and October 12, 2019 and then ceased making weekly claims. For each benefit week except the week that ended September 14, 2019, Ms. Hartson reported that she was able to work and available work, but was not working and had no wages to report. For the week that ended September 14, 2019, Ms. Hartson made an error in her weekly claim and reported that she was not able and/or available for work.

Ms. Hartson's unemployment insurance claim occurred in the context of her involuntary separation from employment with Walmart, Inc. Ms. Hartson began that full-time employment on April 1, 2019 and worked in receiving at distribution center in Mount Pleasant. Ms. Hartson's work hours were 5:15 a.m. to 3:15 p.m., Tuesday through Friday. The work involved unloading

freight from trailers and placing individual boxes of freight on a conveyor belt. The work involved lifting boxes that weighed up to 70 pounds. Ms. Hartson was required to process 1900 freight items per day.

On July 23, 2019, Ms. Hartson suffered an injury to her shoulder and back in the course of the employment as she was lifting a 50-pound box that contained four large containers of detergent. Ms. Hartson reported the injury to her supervisor. Ms. Hartson left work that day to seek medical treatment evaluation and treatment from her doctor. The employer subsequently arranged for Ms. Hartson to be evaluated on July 30, 2019 by a doctor chosen by the employer or the employer's workers' compensation carrier. The doctor selected by the employer released Ms. Hartson to return to work with a 20-pound lifting restriction and a restriction against work that required her to move her arms above head level. The employer initially provided light-duty work that complied with the medical restrictions. During that time, the employer had Ms. Hartson perform sweeping and dusting.

On August 7, 2019, the employer's workers' compensation carrier notified Ms. Hartson that the carrier was denying the workers' compensation claim. The carrier cited as the basis for the denial lack of specific notation in a particular medical record that the injury was work related. Ms. Hartson had suffered the injury at work and had not suffered injury outside of work. Once the workers' compensation carrier denied the claim, the employer notified Ms. Hartson that she was not allowed on the production floor and would have to commence a leave of absence. Ms. Hartson specifically told the employer that she needed to work to support her son and did not want to go off work. The employer told Ms. Hartson she could not return to the employment until she was able to do so without restrictions. The employer subsequently directed Ms. Hartson to submit an application for a leave of absence. Ms. Hartson complied and then subsequently received notice from the employer's third-party leave administrator, Sedgwick, that she was not eligible for a leave of absence. The employer then notified Ms. Hartson on October 1, 2019 that she was involuntarily separated from the employment based on purported excessive absences.

From the time that Ms. Hartson established her claim for benefits through the benefit week that ended October 12, 2019, Ms. Hartson remained able to perform work for the employer within her medical restrictions and available to perform work for the employer within her medical restrictions.

Ms. Hartson accepted new full-time employment at the end of October 2019 and began the new employment on October 29, 2019.

Walmart is not a base period employer for purposes of the claim year that began for Ms. Hartson on August 25, 2019.

## **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(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:

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(10) provides:

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

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

The employer had an obligation to provide Ms. Hartson with reasonable accommodations that would enable her to continue in the employment. See *Sierra v. Employment Appeal Board*, 508 N.W. 2d 719 (Iowa 1993).

The evidence in the record establishes that Ms. Hartson was able to perform work for the employer within her work-related medical restrictions and available to perform work for the employer within her work-related medical restrictions during each benefit week between August 25, 2019 and October 12, 2019. The evidence further establishes that the employer compelled Ms. Hartson to go off work effective August 7, 2019 and further compelled Ms. Hartson to apply for a leave of absence that she did not want. Ms. Hartson did not voluntarily request a leave of absence. The employer's agent then denied the leave of absence that the employer compelled Ms. Hartson to request. Ms. Hartson is eligible for benefits for the period of August 25, 2019 through October 12, 2019, provided she meets all other eligibility requirements.

This matter will be remanded to the Benefits Bureau for adjudication of the separation that occurred on August 7, 2019. In addition, the Benefits Bureau shall recategorize the claimant as a group 6 claimant.

**DECISION:**

The October 1, 2019, reference 02, decision is reversed. The claimant was able to work and available for work during each of the benefits weeks between August 25, 2019 and October 12, 2019. The claimant was not on a leave of absence that she voluntarily requested at any point between August 25, 2019 and October 12, 2019. The claimant is eligible for benefits for the period of August 25, 2019 through October 12, 2019, provided she meets all other eligibility requirements.

This matter will be remanded to the Benefits Bureau for adjudication of the separation that occurred on August 7, 2019. In addition, the Benefits Bureau shall recategorize the claimant as a group 6 claimant.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/scn