

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BARBARA F MEJIA
Claimant

WALMART INC
Employer

APPEAL 20A-UI-01707-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/29/19
Claimant: Respondent (2)R**

Iowa Code § 96.4(3) – Able and Available
Iowa Code § 96.5-3-a – Refusal to Accept Suitable Work

STATEMENT OF THE CASE:

Walmart (employer) appealed a representative's February 12, 2020, decision (reference 03) that concluded Barbara Mejia (claimant) eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 12, 2020. The claimant did not provide a telephone number and, therefore, did not participate in the hearing. The employer participated by Johnnathen Garcia, Member Specialty Manager.

ISSUE:

The issue is whether the claimant was able and available for work and whether she refused suitable work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: On January 13, 2020, the employer offered the claimant a full-time job as a member support person. The offer was made through the employer's hiring recruiter, Workday. The offer contained the hourly rate of \$12.00 per hour and number of hours worked. The claimant accepted the offer on January 13, 2020. She scheduled her orientation/first day of work for January 25, 2020.

The member specialty manager contacted the claimant to reschedule her orientation/first day of work because there was no trainer available. The two agreed the claimant would start work on February 2, 2020. The claimant did not appear for work or notify the employer of her absence. She did not contact the employer after February 2, 2020.

The claimant filed a new claim for unemployment insurance benefits with an effective date of December 29, 2019. Based on the claimant's highest quarter of wages during her base period her average weekly wage was \$953.31 or approximately \$24.00 per hour.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant is not eligible to receive unemployment insurance benefits.

Iowa Admin. Code r. 871-24.24(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3). Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). The claimant did not appear for the appeal hearing to offer any information regarding her ability or availability for work on February 2, 2020. She has the burden and she did not provide sufficient evidence to find eligibility. Accordingly, benefits are denied as of February 2, 2020.

Iowa Code section 96.5(3)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

3. Failure to accept work. If the department finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the department or to accept suitable work when offered that individual. The department shall, if possible, furnish the individual with the names of employers which are seeking employees. The individual shall apply to and obtain the signatures of the employers designated by the department on forms provided by the department. However, the employers may refuse to sign the forms. The individual's failure to obtain the signatures of designated employers, which have not refused to sign the forms, shall disqualify the individual for benefits until requalified. To requalify for benefits after disqualification under this subsection, the individual shall work in and be paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

a. (1) In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, prior training, length of unemployment, and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and any other factor which the department finds bears a reasonable relation to the purposes of this paragraph. Work is suitable if the work meets all the other criteria of this paragraph and if the gross weekly wages for the work equal or exceed the following percentages of the individual's average weekly wage for insured work paid to the individual during that quarter of the individual's base period in which the individual's wages were highest:

- (a) One hundred percent, if the work is offered during the first five weeks of unemployment.
 - (b) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.
 - (c) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.
 - (d) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.
- (2) However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

The work was offered within the first five weeks of the claimant's unemployment. The claimant accepted the work even though the job did not provide the claimant wages one hundred percent of those paid to the claimant during the highest quarter of her base period. The claimant could have refused the work without being disqualified but she accepted the lower paying work on January 13, 2020. Subsequent to her acceptance, she did not appear for work.

The matter of her separation from employment is remanded for determination.

DECISION:

The representative's February 12, 2020, decision (reference 03) is reversed. The claimant is not eligible to receive unemployment insurance benefits as of February 2, 2020.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/scn