

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KATHLEEN M HAMILTON
Claimant

WALMART INC
Employer

APPEAL NO. 20A-UI-07475-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/26/20
Claimant: Appellant (1)

Iowa Admin. Code ch. 871 r. 24.23(10) – Leave of Absence
Iowa Code § 96.4-3 – Able and Available
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Federal Law PL 116-136 Sec. 2104 – Eligibility for Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated July 1, 2020 reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on August 20, 2020. Claimant participated personally. Employer failed to answer when the store was called as the phone rang through for 2 ½ minutes without being answered and did not participate. Claimant's Exhibit 1 was admitted into evidence.

ISSUES:

Whether claimant is able and available for work?

Whether claimant is on an approved leave of absence?

Whether claimant has been overpaid state unemployment benefits?

Whether claimant is eligible to receive Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant works as a full time cashier for employer. Claimant, as an elderly individual with diabetes and other problems had concerns for her health and the possible contraction of Covid as she encounters many people in her job.

Claimant produced a doctor's note excusing her from work from April 24 through October 1, 2020. Claimant asked for and received a leave of absence for this period. During this entire time claimant was not able and available for work. Employer had work available for claimant while she was gone.

Claimant stayed away from work until July 18, 2020. At that time, her financial concerns made it so that claimant had to return to work.

REASONING AND CONCLUSIONS OF LAW:

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.

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. 871-24.23(35) provides:

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

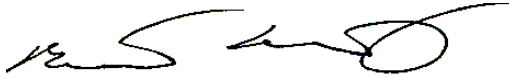
(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

Inasmuch as the Covid concern kept claimant away from work for the period between April 24 through July 18, 2020, the claimant has not established the ability to work for that period. Benefits are withheld for that period.

Note to Claimant: Even though claimant is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

DECISION:

The decision of the representative dated July 1, 2020, reference 01 is affirmed. Claimant is not eligible to receive unemployment insurance benefits, effective April 24, 2020 through July 18, 2020, provided claimant meets all other eligibility requirements.



Blair A. Bennett
Administrative Law Judge

August 24, 2020
Decision Dated and Mailed

bab/scn