

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**ROSEMARIE LACHNEY
3006 35TH AVE
COUNCIL BLUFFS IA 51501-7907**

**WALMART INC
C/O TALX UC EXPRESS
PO BOX 283
SAINT LOUIS MO 63166**

**DIA APPEAL NO. 21IWDUI0060
IWD APPEAL NO. 20A-UI-07870**

**ADMINISTRATIVE LAW JUDGE
DECISION**

APPEAL RIGHTS:

This Decision Shall Become Final, unless within fifteen (15) days from the mailing date below the administrative law judge's signature on the last page of the decision, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

*Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
or
Fax (515) 281-7191*

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.
That an appeal from such decision is being made and such appeal is signed.

The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

ONLINE RESOURCES:

UI law and administrative rules: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-law-and-administrative-rules>

UI Benefits Handbook: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-benefits-handbook-guide-unemployment-insurance-benefits>

Handbook for Employers and forms: <https://www.iowaworkforcedevelopment.gov/employerforms>

Employer account access and information: <https://www.myiowaui.org/UIIPTaxWeb/>

National Career Readiness Certificate and Skilled Iowa Initiative: <http://skillediowa.org/>

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROSEMARIE LACHNEY
Claimant

WALMART INC
Employer

**DIA APPEAL NO. 21IWDUI0060
IWD APPEAL NO. 20A-UI-07870**

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 4/19/20
Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the June 25, 2020 decision denying benefits. A telephone hearing was held on August 24, 2020. The claimant, Rosemarie Lachney, participated personally. Lance Lachney testified on behalf of the claimant. The employer did not participate. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records including the fact-finding documents. The claimant submitted three exhibits, which were admitted.

ISSUE:

Is the claimant able and available for work?

FINDINGS OF FACT:

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

Claimant worked as an apparel representative at Walmart. When the COVID-19 pandemic hit Iowa, claimant had concerns about continuing to work. Walmart had not taken any steps to protect its employees. Claimant is 71 years old and has underlying health concerns that increase the risk of severe illness or death if she were to be infected by the coronavirus. Claimant spoke to her physician, who indicated she has a compromised immune system. Claimant worked her last shift on March 10 and started calling off from work on March 12. She requested a leave of absence due to her concerns about the coronavirus.

Claimant applied for unemployment benefits and was denied. This appeal followed.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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 Administrative Code rule 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 Administrative Code rule 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.

To be able to work, "[a]n 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." *Sierra v. Empl't Appeal Bd.*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra*, 508 N.W.2d at 723. "Insofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced

separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *Gilmore v. Empl't Appeal Bd.*, No. 03-2099, 2004 WL 2579240, at *1 (Nov. 15, 2004).

Here, I conclude claimant was able and available for work. The existing framework was not written with a pandemic in mind, but we can adapt it to this situation. The question is designed to ask whether the claimant is "genuinely attached to the labor market." Here claimant remained attached to the labor market; the labor market let her down when it could not guarantee her safety. Benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The June 25, 2020 (reference 01) unemployment insurance decision is reversed. Claimant was able and available for work. Benefits are allowed, provided claimant is otherwise eligible.



Emily Kimes-Schwiesow
Administrative Law Judge

September 8, 2020
Decision Dated and Mailed

EKS/lb