

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MICHAEL D SONDALL**  
Claimant

**APPEAL 21A-UI-12120-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WALMART INC**  
Employer

**OC: 04/04/21**  
**Claimant: Appellant (1)**

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Iowa Code § 96.1A(37) – Total, Partial, and Temporary Unemployment  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages  
Iowa Code § 96.7(2)A(2) – Employer Contributions and Reimbursements  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

On May 6, 2021, the claimant, Michael D. Sondall, filed an appeal from the April 29, 2021 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was still employed at the same hours and wages as contemplated in his contract of hire and was not eligible for benefits. The parties were properly notified of the hearing. A telephonic hearing was held at 1:00 p.m. on Thursday, July 22, 2021. The claimant, Michael D. Sondall, participated. The employer, Walmart, Inc., participated through Deb McIntyre, Fresh and Consumable Coach. No exhibits were offered or admitted into the record. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Is the claimant totally, partially, or temporarily unemployed?  
Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer Walmart, Inc., on or about March 28, 1991. Claimant is currently employed in a part-time team associate position with the employer. For the past several years, claimant has maintained a set part-time schedule with the employer. He works every Monday and Tuesday night, and he also works every other weekend.

Claimant separated from full-time employment with a bank in September 2019. Between September 2019 and June 28, 2021, claimant has been looking for full-time employment in the banking industry. He has continued to work for Walmart in his part-time position while searching for full-time employment.

Claimant's base period extends across all four quarters in 2020. Claimant's sole base period employer is Walmart, Inc. (account 168629).

The unemployment insurance decision was mailed to the claimant's address of record on April 29, 2021. Claimant received that decision and filed his appeal within the ten-day deadline. Claimant filed his appeal on May 6, 2021.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant is not eligible for regular unemployment insurance benefits, as he is neither totally nor partially unemployed.

#### **The first issue to be considered in this appeal is whether the claimant's appeal is timely.**

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision."

Here, the documentation in the administrative record shows that claimant filed a timely appeal on May 6, 2021.

#### **The next issue to be considered is whether the claimant is eligible for unemployment insurance benefits.**

Iowa Code § 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 Code § 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 Admin. Code 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 different from the contract for hire, such claimant cannot be considered partially unemployed.

Iowa Admin. Code r. 871-23.43(4)a provides in part:

**(4) *Supplemental employment.***

a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relieved of benefit charges....

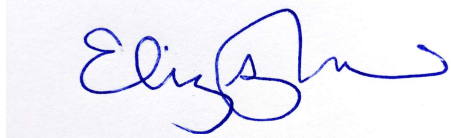
Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total unemployment is when someone has received no wages and performed no services during any given week. *Id.* In this case, the claimant has performed services and earned wages for each week he has claimed benefits. Claimant is not totally unemployed.

The next question is whether the claimant is partially unemployed. If an individual is employed in a part-time position working the same hours and wages as contemplated at hire, he or she cannot be considered partially unemployed. Iowa Admin. Code r. 871-24.23(26). In this case, for the past several years, claimant has worked a consistent part-time schedule for the employer. He structured his part-time hours around (1) maintaining full-time employment and (2) balancing family life. Claimant continues to work for the employer. Additionally, claimant only has wages from Walmart, Inc., in his base period for the claim year effective April 4, 2021. He no longer has wages from full-time employment in the base period which would still support eligibility for benefits even if part-time supplemental wages were removed. As the claimant is working in a part-time job in the same hours and wages contemplated at hire, or agreed to

thereafter for a period of years, the claimant is not partially unemployed and is not eligible for benefits.

**DECISION:**

The April 29, 2021 (reference 01) unemployment insurance decision is affirmed. Claimant is still employed at the same hours and wages as contemplated in his contract of hire. He is neither totally nor partially unemployed, and benefits must be withheld.



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Elizabeth A. Johnson  
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July 29, 2021  
Decision Dated and Mailed

lj/kmj