

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

WILLIAM L HAMILTON
Claimant

WALMART INC.
Employer

APPEAL 23A-UI-05444-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/16/23
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

William L. Hamilton, the claimant/appellant,¹ filed an appeal from the Iowa Workforce Development May 22, 2023 (reference 03) unemployment insurance (UI) decision. The decision denied Mr. Hamilton REGULAR (state) UI benefits as of April 16, 2023 because IWD concluded that he is not willing to work the number of hours required in his occupation so he is not available for work. The Iowa Department of Inspections and Appeals (DIA) UI Appeals Bureau mailed a notice of hearing to Mr. Williams and the employer. The undersigned administrative law judge held a telephone hearing on June 14, 2023. Mr. Hamilton participated personally. The employer did not participate in the hearing. The undersigned took official notice of the administrative record.

ISSUES:

Is Mr. Williams able to and available for work as of April 16, 2023?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the undersigned finds: Mr. Hamilton began working for the employer, Walmart, in 1998. He worked as a full-time sale associate. His employment ended on February 27, 2023 when the employer dismissed him from work. Mr. Hamilton filed his initial UI claim effective April 16, 2023.

Mr. Hamilton had been working 40-50 hours per week at Walmart. When the employer dismissed him from work, he realized that due to his age he could no longer take working full-time hours. Mr. Hamilton began looking for part-time work. Mr. Hamilton also looked into Social Security (SS) benefits and learned that he could apply on his birthday in early May 2023. Mr. Hamilton applied for SS benefits in early May 2023, and he was approved. Mr. Hamilton learned that his SS benefits would be reduced \$2.00 for every \$1.00 he earns over a certain dollar amount. Mr. Hamilton eventually began working part-time for employer Hy-Vee in mid-May 2023.

¹ Claimant is the person who filed the UI claim with IWD. Appellant is the person or employer who filed the appeal.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the undersigned concludes as follows:

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 96.1A, subsection 37, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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) provides:

Benefit 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.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

Iowa Admin. Code r. 871-24.23(22) provides:

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

(22) Where a claimant does not want to earn enough wages during the year to adversely affect receipt of federal old-age benefits (social security).

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."² "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."³ A person claiming benefits has the burden of proof that she is able to work, available for work, and earnestly and actively seeking work.⁴

In this case, Mr. Hamilton is limiting how much he earns, so his SS benefits are not reduced. Given the two-to-one-dollar reduction in his SS benefits if he earns too much in wages, Mr. Hamilton's actions make sense. But, per Iowa law, Mr. Hamilton can't limit how much he works and be eligible for UI benefits. Mr. Hamilton is not available for work as of April 16, 2023, the effective date of his UI claim. Benefits are denied.

DECISION:

The May 22, 2023 (reference 03) UI decision is AFFIRMED. Mr. Hamilton is not able to and available for work as of April 16, 2023. Benefits are denied.



Daniel Zeno
Administrative Law Judge

June 16, 2023
Decision Dated and Mailed

scn

² *Sierra v. Employment Appeal Board*, 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).

³ *Sierra* at 723.

⁴ Iowa Admin. Code r. 871-24.22.

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

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:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to **file a petition for judicial review in District Court** within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly 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.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de **presentar una petición de revisión judicial en el Tribunal de Distrito** dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.