

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KATHY M BOLEYN
Claimant

WALMART INC
Employer

APPEAL 20A-UI-06897-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2)j – Benefit Eligibility Conditions – Leave of Absence
Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence

STATEMENT OF THE CASE:

Claimant filed an appeal from the June 19, 2020 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on July 30, 2020, at 9:00 a.m. Claimant participated with her attorney, Matthew Boleyn. Employer did not participate. No exhibits were admitted.

ISSUES:

Whether claimant is able to and available for work.
Whether claimant is on an approved leave of absence.

FINDINGS OF FACT:

As claimant was the only witness, the administrative law judge makes the following findings of fact based solely upon claimant's testimony: Claimant began her employment as a part-time cashier with Walmart in August 2017. Claimant's employment with Walmart supplements her full-time employment with Nordstrom. Claimant requested and was granted a leave of absence from Walmart beginning March 29, 2020, because of her concerns about Covid-19. Claimant returned to work for Walmart on May 17, 2020 and has worked her regular hours since then. Claimant filed a claim for unemployment insurance benefits effective April 12, 2020, when she was laid off from Nordstrom. Other than the leave of absence, claimant has been able to and available for work since April 12, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was on a voluntary leave of absence and, thus, is not eligible for benefits from April 12, 2020 until May 16, 2020. Claimant was able to and available for work effective May 17, 2020. Benefits are allowed effective May 17, 2020, provided claimant is otherwise eligible.

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. 871-24.22(2)j 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.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

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.

Claimant was on a voluntary leave of absence from March 29, 2020 until May 16, 2020. Therefore, claimant is not eligible for benefits for that period of time. Claimant was able to and available for work effective May 17, 2020. Benefits are allowed as of May 17, 2020, provided claimant is otherwise eligible.

DECISION:

The June 19, 2020 (reference 01) unemployment insurance decision is modified in favor of appellant. Claimant is not eligible for benefits between April 12, 2020 and May 16, 2020, because she was on a voluntary leave of absence. Claimant was able to and available for work as of May 17, 2020. Benefits are allowed effective May 17, 2020, provided claimant is otherwise eligible.



Adrienne C. Williamson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

August 6, 2020
Decision Dated and Mailed

acw/mh

NOTE TO CLAIMANT: This decision determines you are not eligible for REGULAR unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **If you have applied and have been approved for PUA benefits, this decision will NOT negatively affect your entitlement to PUA benefits.**