

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**ANTONIO METCALF**  
Claimant

**WALMART INC**  
Employer

**APPEAL 20A-UI-04315-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/20**  
**Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Able and Available  
871 IAC 24.24.23(26) – Same Hours and Wages – Still Employed  
871 IAC 24.22(2)f – Part-Time Worker – Able and Available

**STATEMENT OF THE CASE:**

Antonio Metcalf (claimant) appealed a representative's May 15, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits after a separation from work with Walmart (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 4, 2020. The claimant was represented by leashea Armstrong, the claimant's mother, and participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The administrative law judge took official notice of the administrative file.

**ISSUES:**

The issues include whether the claimant was separated from employment for any disqualifying reason, whether the claimant was overpaid benefits, which party should be charged for those benefits, and whether the claimant is eligible for 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 that: The claimant was hired in May 2019, as a part-time cart associate. He was hired to work from 5:00 p.m. to 10:00 p.m., Wednesday, Thursday, Saturday, and Sunday. The claimant is a minor.

Starting the week ending March 22, 2019, the employer reduced its hours due to the coronavirus pandemic. It closed the store at 8:30 p.m. Sometimes the claimant appeared for work and the store was closed. The employer also closed or limited operation due to protest marches regarding the murder of George Floyd. The claimant was able and available to work his regular hours.

The claimant filed for unemployment insurance benefits with an effective date of March 22, 2020. His weekly benefit amount was determined to be \$100.00. The claimant received benefits of \$410.00 over the five-weeks ending May 9, 2020. He also received \$3,000.00 in federal pandemic unemployment compensation for the five-week period ending May 9, 2020.

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

For the reasons that follow the administrative law judge concludes the claimant is able and available for work as of March 22, 2020.

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)f provides:

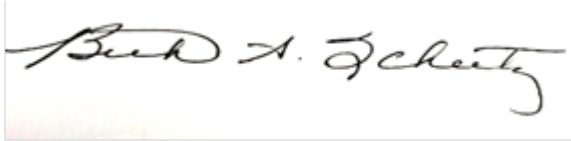
Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

f. Part-time worker, student--other. Part-time worker shall mean any individual who has been in the employ of an employing unit and has established a pattern of part-time regular employment which is subject to the employment security tax, and has accrued wage credits while working in a part-time job. If such part-time worker becomes separated from this employment for no disqualifiable reason, and providing such worker has reasonable expectation of securing other employment for the same number of hours worked, no disqualification shall be imposed under Iowa Code section 96.4(3). In other words, if an individual is available to the same degree and to the same extent as when the wage credits were accrued, the individual meets the eligibility requirements of the law.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). The claimant was hired as a part-time worker. The claimant's hours were reduced by the employer. The claimant is able and available for work as of March 22, 2020.

**DECISION:**

The representative's May 15, 2020, decision (reference 01) is reversed. The claimant was able and available for work. Benefits are allowed as of March 22, 2020, provided the claimant is otherwise eligible.

A handwritten signature in black ink, reading "Beth A. Scheetz", is positioned above a horizontal line.

Beth A. Scheetz  
Administrative Law Judge

June 22, 2020  
Decision Dated and Mailed

bas/scn