

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TILAL M ABDELDAFI
Claimant

WALMART INC
Employer

APPEAL 20A-UI-09746-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/17/20
Claimant: Appellant (4/R)

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

Tilal Abdeldafi (claimant) appealed a representative's August 6, 2020, decision (reference 01) that denied benefits based on his employment with Walmart (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 29, 2020. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing.

The claimant offered and Exhibit A was received into evidence. The administrative law judge took official notice of the administrative file.

ISSUES:

The issue is whether the claimant is eligible for total or partial unemployment benefits, still employed at the same hours and wages, whether the claimant is able and available for work and/or whether the employer's account is subject to charge.

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 on January 31, 2019. In March 2020, he became a part-time pharmacy technician. The claimant is a full-time student and needed to earn more money during the summer months. When he was hired as a pharmacy technician, the employer promised to pay him \$15.00 per hour and schedule him thirty-five hours per week. He would earn \$525.00 per week.

The employer never scheduled the claimant more than twenty-nine hours per week during the summer months. The claimant was paid every two weeks. For the two-week period ending near May 23, 2020, he averaged \$380.00 gross per week. For the two-week period ending near May 6, 2020, he averaged \$429.00 gross per week. For the two-week period ending near May 20, 2020, he averaged \$366.00 gross per week. For the two-week period ending near

July 4, 2020, he averaged \$122.00 gross per week. For the two-week period ending near July 18, 2020, he averaged \$280.00 gross per week and was quarantined July 17, 2020, and July 18, 2020. For the two-week ending near August 1, 2020, he earned \$125.00 gross and was quarantined from July 19, 2020, through July 28, 2020.

The claimant filed for unemployment insurance benefits with an effective date of May 17, 2020. His weekly benefit amount was determined to be \$481.00. The claimant received benefits from May 17, 2020, to the week ending August 1, 2020, for a total of \$4,045.00 in state unemployment insurance benefits after the separation from employment. He also received \$6,000.00 in Federal Pandemic Unemployment Compensation for the ten-week period ending July 25, 2020. The claimant reported net pay rather than gross pay when he filed his weekly claims.

REASONING AND CONCLUSIONS OF LAW:

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 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. 871-24.23(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.

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 requested a leave of absence from July 17, 2020, through July 28, 2020, while he was in quarantine. The employer agreed to allow the claimant time off for that reason. The claimant

was not able to and available for work during this period. He was not able and available for work for the week ending July 25, 2020. Benefits are denied for the one-week ending July 25, 2020.

For all other weeks, the claimant's hours were reduced by the employer. The claimant was still employed with the employer but the employer was not providing the same hours as was in the original contract for hire. Benefits are allowed as of May 17, 2020, provided the claimant is otherwise eligible.

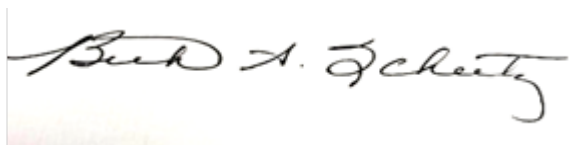
The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision. This is to determine the correct amount of weekly benefit for each week after considering the claimant's weekly gross earnings.

DECISION:

The August 6, 2020, (reference 01) unemployment insurance decision is modified in favor of the appellant. The claimant is able to work and available for work effective May 17, 2020. Benefits are allowed effective May 17, 2020, provided the claimant is otherwise eligible. Benefits are denied for the one-week period ending July 25, 2020.

The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision. This is to determine the correct amount of weekly benefit for each week after considering the claimant's weekly gross earnings.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.



Beth A. Scheetz
Administrative Law Judge
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September 30, 2020
Decision Dated and Mailed

bas/scn