

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LUANGWA R JAMES
Claimant

APPEAL 19A-UI-02428-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALMART INC
Employer

OC: 02/10/19
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions
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:

The claimant filed an appeal from the March 12, 2019, (reference 02) unemployment insurance decision that denied benefits based upon a voluntary leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on April 4, 2019. Claimant participated. Employer participated through personnel coordinator Heather Snyder. Employer's Exhibits 1 and 2 were received. Claimant's Exhibit A was received.

ISSUES:

Is the claimant able to work and available for work effective February 10, 2019?
Is the claimant on an approved leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on July 20, 2017. Claimant worked 32 hours per week as a part-time overnight sales associate. Claimant has back and knee issues that make it difficult to perform the work of an overnight sales associate. On October 2, 2018, claimant requested an intermittent leave of absence due to the medical issues. The request was approved. On October 12, 2018, claimant requested to reduce her scheduled hours to one shift per week. That request was granted as well. Since that date, claimant has requested to take intermittent leave for the one shift per week every week and has not worked for employer.

In October 2018, claimant began working a full-time, daytime job for Randstad. Claimant was temporarily laid off from her full-time job with Randstad during the one week ending February 23, 2019, and did not work any hours that week. Randstad is not a base period employer.

Claimant's base period includes the fourth quarter of 2017 and the first three quarters of 2018. Walmart is the only employer in claimant's base period.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work.

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)(1), (2) 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

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.

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.

In this case, claimant requested reduced hours and a leave of absence. Employer agreed and claimant remains on the leave of absence. Claimant is voluntarily unemployed, as it relates to Walmart. Claimant has no other base period wages. Therefore, benefits must be denied.

DECISION:

The March 12, 2019, (reference 02) decision is affirmed. The claimant is not able to work and available for work effective February 10, 2019. Benefits are denied.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

cal/scn