

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JOSEPH D HUGHES-EMPKE**  
Claimant

**WAL-MART STORES INC**  
Employer

**APPEAL 16A-UI-07080-DL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/22/16**  
**Claimant: Appellant (1-R)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 16, 2016, (reference 02) unemployment insurance decision that denied benefits based upon not being able to or available for work. The parties were properly notified about the hearing. A telephone hearing was held on July 14, 2016. Claimant participated. Employer participated through co-manager Josh Bonney and personnel coordinator Sue Johnson.

**ISSUE:**

Is the claimant available for work effective May 22, 2016?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed full-time as a support manager and remains an “active” employee on a leave of absence in the employer’s personnel records. His last day of work was December 23, 2015, when the employer, through outside contractor for personnel matters Sedgewick, granted a personal leave of absence but was not aware of the reason for the leave or that he would be moving out of state. He requested the leave of absence to attend school in Kentucky and remains in school for “a couple of weeks.” The leave of absence was set to end June 1, 2016, and the employer anticipated he would be returning to work on June 2, 2016. He did not. Nor did he provide an updated address or otherwise communicate with the employer about his employment status. The employer attempted to reach him beginning the last week of May through June 10, 2016, about his leave status and return to work plans but was unable to communicate with him by phone. They left voice mail messages that were unreturned. This appeal hearing was the first communication between the parties since March 2016. Continued work is available. He has not contacted the employer about returning to work and assumed employment would end at the end of the leave of absence.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not available for work for the period in question.

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 96.19, 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) 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.

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(5) provides:

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

(5) Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment except if the students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law.

Iowa Admin. Code r. 871-24.23(10) provides:

(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.

An individual claiming benefits has the burden of proof that he is able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

Because claimant does not have a wage history of working while attending school full-time he is not available for work until he establishes he has completed his training. Further, he was on a leave of absence through May 31, 2016, which was extended when he failed to return to work as planned on June 1, 2016. Because of this and his failure to maintain communication with the employer, which has continuing work available to him, or provide an accurate forwarding address he has not established he is available for work.

#### **DECISION:**

The June 16, 2016, (reference 02) unemployment insurance decision is affirmed. The claimant is not available for work effective May 22, 2016. Benefits are denied until such time as claimant provides evidence he is no longer in school full-time and/or that there is a separation from employment or the leave of absence has concluded.

**REMAND:**

The failure to return to work at the end of the leave of absence and/or separation issues delineated in the findings of fact are remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision.

---

Dévon M. Lewis  
Administrative Law Judge

---

Decision Dated and Mailed

dml/pjs