

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

SUSAN K WOLFF

Claimant

APPEAL NO. 07A-UI-10695-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

**OC: 10/07/07 R: 02
Claimant: Appellant (1)**

Iowa Code section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Wal-Mart filed a timely appeal from the November 9, 2007, reference 04, decision that allowed benefits. After due notice was issued, a hearing was held on December 5, 2007. Claimant Susan Wolff participated. Assistant Manager Tim Morrow represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant.

ISSUES:

Whether the claimant has been able to work and available for work since establishing his/her claim for benefits.

Whether the claimant has been partially unemployed from her employment at Wal-Mart since establishing her claim for unemployment insurance benefits on October 7, 2007.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Susan Wolff commenced her employment with Wal-Mart on October 2, 2006. At that time, Ms. Wolff worked full-time, 40 hours per week in the jewelry department. Ms. Wolff worked evening shifts. Her regular days off were Sunday and Wednesday. The employer considers full-time employment to be 34-40 hours per week for purposes of determining eligibility for health and dental insurance benefits. Ms. Wolff has at all times been interested in maintaining her eligibility for these benefits by working the requisite number of hours.

In March 2007, Ms. Wolff began to receive social security retirement benefits. Ms. Wolff needed to limit her work hours to 35 per week to avoid adversely impacting her retirement benefits. Also in March, the Store Manager promoted Ms. Wolff to freight supervisor for the jewelry department. Ms. Wolff and the Store Manager agreed that Ms. Wolff would work five days per week, 10:00 a.m. to 7:00 p.m. The freight supervisor position had previously been an overnight position. Ms. Wolff continued to work 34-35 hours per week from March 2007 until the end of September 2007, when a new Store Manager took over.

The new Store Manager concluded that the jewelry department freight supervisor position should once again be an overnight position and removed Ms. Wolff from the freight supervisor position. On September 27, Ms. Wolff expanded her work availability so that she could continue to receive

34-35 hours per week and qualify for full-time benefits. Ms. Wolff kept her same days off, but expanded her work availability so that she was available five days per week 7:00 a.m. to 11:00 p.m.

Despite Ms. Wolff's expanded availability, the employer reduced Ms. Wolff's work hours and hired two new employees to work full-time in the jewelry department. The employer's scheduling system uses a workweek that runs from Saturday to Friday. Ms. Wolff was on vacation beginning September 28 through October 6. During the period of October 8 through 12, Ms. Wolff was scheduled to work 15.23 hours. During the period of October 13-19, Ms. Wolff was scheduled to work 11 hours. During the period of October 20-26, Ms. Wolff was scheduled to work 26 hours. During the period of October 27 through November 2, Ms. Wolff returned to her normal 34 hours per week. During the period of November 3-9, Ms. Wolff was scheduled to work 19.5 hours. Since returning from her vacation, Ms. Wolff has worked all of the hours the employer has made available to her.

Ms. Wolff established a claim for unemployment insurance benefits that was effective October 7, 2007 and has received benefits. Ms. Wolff's weekly benefit amount is set at \$231.00. For the week that ended October 13, Ms. Wolff reported wages of \$213.00 and received \$75.00 in benefits. For the week that ended October 20, 2007, Ms. Wolff reported \$101.00 in wages in received \$187.00 in benefits. For the weeks ending October 27, November 3, 10, 17, and 24, Ms. Wolff reported wages that exceeded her weekly benefit amount by more than \$15.00 and received no unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

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".

871 IAC 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.

An individual shall be deemed partially unemployed in any week in which, while employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars. Iowa Code section 96.19(38)(b).

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. 871 IAC 24.23(26).

Regardless of whether the administrative law judge considers Ms. Wolff's established 34-35 hour workweek full-time or part-time employment, the evidence indicates that Ms. Wolff has not unduly restricted her availability for work. Ms. Wolff's availability was not unduly restricted while she served as the freight supervisor. The evidence indicates that immediately prior to establishing her claim for benefits Ms. Wolff expanded her work availability. Ms. Wolff continues to be available for 34-35 hours per week since March 2007.

The evidence indicates that the employer instigated multiple weeks of partial unemployment. Ms. Wolff is job attached and, based on the partial unemployment, is exempt from the ability and availability requirements of Iowa Code section 96.4(3). The evidence establishes that Ms. Wolff was partially unemployed during the benefit weeks that ended October 13, 20, 27, and November 10 and was eligible for the benefits she received during the weeks that ended October 13 and 20, provided she was otherwise eligible. The employer's account may be charged.

Ms. Wolff continues to be eligible for benefits during weeks in which she is partially unemployed and should continue to report her gross weekly wages to Iowa Workforce Development.

DECISION:

The Agency representative's November 9, 2007, reference 04 decision is affirmed. The claimant has experienced multiple weeks of partial unemployment since establishing her claim for benefits. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged. The claimant should continue to report her weekly gross wages to Iowa Workforce Development.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw