

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CAROL A NEBEL
Claimant

WAL-MART STORES INC
Employer

APPEAL 17A-UI-11204-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/01/17
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a – Same Base Period Employment

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 26, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 20, 2017. The claimant participated personally. The employer registered witness, Edward Allison, who was unavailable when called twice for the hearing. Both calls were disconnected by the employer. Claimant Exhibit A was admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant eligible for partial unemployment insurance benefits?
Was the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant has worked for employer, Wal-Mart Stores Inc., for approximately twelve years. For the past two years, the claimant has worked twenty hours per week as a “people greeter.” Her base period history reflects she has consistently worked the same hours. Her current rate of pay is \$12.61 per hour.

Beginning October 1, 2017, the claimant’s hours were reduced, and the claimant was scheduled only four to seventeen hours per week. The claimant stated her hours were reduced in part to accommodate other employees who were on “light duty” and due to the hiring of other greeters. The claimant acknowledged she was unable to work eleven of her twelve scheduled hours for the week of October 15, 2017 due to the flu. She has otherwise worked all scheduled hours and offered to cover shifts for other employees as needed.

As a result of the reduction in hours, the claimant filed a new claim for unemployment insurance benefits with an effective date of October 1, 2017. Her weekly benefit amount was determined to be \$146.00.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was eligible for partial unemployment insurance benefits effective October 1, 2017. The claimant filed a claim requesting partial unemployment insurance benefits for the weeks in which her earnings were less than the weekly benefit amount.

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 Code § 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) 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.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Iowa Code § 96.7(2)a(2)(a), (b), and (c) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

The preponderance of the evidence establishes the claimant's regular workweek at the point she filed her new claim was twenty hours per week. She has consistently worked twenty hours per week as a people greeter for the past two years. She was working less than that regular workweek due to a reduction in hours effective October 1, 2017, and she was entitled to partial unemployment insurance benefits.

Because the claimant is not currently employed under the same hours and wages, she is considered partially unemployed. Benefits may be allowed based upon reporting of weekly earnings. For whatever period the employer is not offering the same wages and hours as contemplated in the contract or terms of hire, it may be liable for benefit charges to its account.

The unemployment insurance law provides that an individual be able to and available for work. Iowa Code § 96.4-3. The claimant was able to and available to work and did not restrict the number of hours she was willing to work. The claimant was not able and available to work all available shifts for the week of October 15 through 21, 2017 and is not eligible for that week only. Therefore, based on the evidence, the administrative law judge concludes the claimant is partially unemployed and eligible for benefits beginning October 1, 2017, except for the week ending October 21, 2017, when the claimant was unable to work due to illness. Benefits shall be allowed provided she is otherwise eligible.

DECISION:

The unemployment insurance decision dated October 26, 2017 (reference 01), is modified in favor of the claimant. The claimant is partially unemployed. The claimant is eligible for benefits for the period of October 1 through 14, 2017. The claimant is ineligible for benefits for the one week period ending October 21, 2017 because she was not able and available to work due to the flu. The claimant is otherwise eligible effective October 22, 2017. She is required to report gross wages earned for each week of benefits claimed. The employer's account will be subject to charge for benefits paid to the claimant.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn