

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHEYANNE L MCDOWELL
Claimant

APPEAL NO: 17A-UI-08756-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 07/23/17
Claimant: Appellant (1)

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 17, 2017, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 13, 2017. The claimant participated in the hearing. The employer did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time optician for Wal-Mart from April 5, 2016 to September 8, 2017. Approximately two months ago, the claimant notified the employer she could only work Fridays because her brother-in-law, who provided childcare for the claimant, left on an extended vacation. The claimant's husband is off work on Fridays so she can only work on Fridays when her husband can watch their children because she does not trust anyone else to watch her children.

REASONING AND CONCLUSIONS OF LAW:

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

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. 871-24.23(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

While the claimant's concern for her children is understandable, she cannot be considered able and available for work under the meaning of the law when she limits her availability to Fridays. The claimant could work many more hours if she were willing to work other days of the week in addition to Fridays. Under these circumstances, the administrative law judge concludes the claimant is not able and available for work. Accordingly, benefits must be denied.

DECISION:

The August 17, 2017, reference 02, decision is affirmed. The claimant is not able and available for work. Benefits are denied.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn