

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROBERT D WILKINS
Claimant

WALMART INC
Employer

APPEAL NO. 20A-UI-00022-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/01/19
Claimant: Appellant (2)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Robert Wilkins filed a timely appeal from the December 23, 2019, reference 02, decision that denied benefits effective December 1, 2019, based on the deputy's conclusion that Mr. Wilkins was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on January 23, 2020. Mr. Wilkins participated. Michael Kostboth represented the employer. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO and WAGE-A.

ISSUES:

Whether Mr. Wilkins was able to work and available for work during the two weeks between December 1, 2019 and December 14, 2019.

Whether Mr. Wilkins was partially unemployed and/or temporarily unemployed during the two weeks between December 1, 2019 and December 14, 2019.

Whether the employer's account may be charged for benefits for the two weeks between December 1, 2019 and December 14, 2019.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Robert Wilkins began his full-time employment with Walmart, Inc. in January 2018. From the beginning of the employment through the first week of November 2019, Mr. Wilkins stocked shelves in the produce department. Through the first week of November 2019, Mr. Wilkins' established work hours were 4:00 a.m. to 1:00 p.m., Monday, Tuesday, Thursday, Friday and Saturday. At some point, the employer assigned the job title Fresh Cap 1 to the work Mr. Wilkins performed. Mr. Wilkins hourly wage has held steady at \$12.65 per hour for about two years.

While Mr. Wilkins was in the full-time Fresh Cap 1 position, he engaged in conversation with Michael Kostboth, Assistant Store Manager, regarding his desire to transition to work that would allow him to start his work day somewhat later than 4:00 a.m. Mr. Kostboth suggested that Mr. Wilkins transition to full-time work in the different stocking job that carried the job title Foods.

Mr. Kostboth told Mr. Wilkins that he planned to initial a work crew in the Foods category that would work from 7:00 a.m. to 4:00 p.m. The Foods area operates between the hours of 7:00 a.m. and 10:00 p.m. Based on Mr. Kostboth's suggestion, Mr. Wilkins transitioned into a Foods position effective November 9, 2019 and updated his work availability to 7:00 a.m. to 4:00 p.m., Monday, Tuesday, Thursday, Friday and Saturday. In other words, Mr. Wilkins kept the same days of availability, but shifted his availability for work on those days to correspond to the time when Mr. Kostboth indicated the Foods crew would be working. Mr. Kostboth had not cleared his plans for a Foods crew with the store's human resources personnel and the Foods crew was never authorized. Once Mr. Wilkins was in the Foods position, the employer only scheduled Mr. Wilkins to work part-time hours. To make matters worse, the employer re-categorized Mr. Wilkins as a part-time employee, which meant Mr. Wilkins was no longer guaranteed any scheduled work hours.

Mr. Wilkins established an original claim for unemployment insurance benefit that was effective December 1, 2019. Iowa Workforce Development set Mr. Wilkins' weekly benefit amount at \$301.00. Mr. Wilkins established his claim for benefits in response to the reduced number of hours the employer had available for him in the Foods position. During the week of December 1-7, 2019, the employer provided Mr. Wilkins with about eight hours of work, for which Mr. Wilkins' gross wages would have been \$101.20. During the week of December 8-14, 2019, the employer initially scheduled Mr. Wilkins to work 32.5 hours. However, when Mr. Wilkins appeared to start his first scheduled shift of the week, he learned that the employer had reduced his work hours to zero for the week. Accordingly, Mr. Wilkins received no wages for the week of December 8-14, 2019. Mr. Wilkins made a weekly claim for the week that ended December 7, 2019 and the week that ended December 14, 2019. Mr. Wilkins then discontinued his claim for benefits. During the two weeks when Mr. Wilkins' claim was active, he remained able to work full-time and available for full-time work during the 7:00 a.m. to 4:00 p.m. hours that he and Mr. Kostboth had agreed to before Mr. Wilkins accepted the transfer to the Foods position.

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".

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. 871-24.23(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.

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).

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 Section 96.19(38)(c).

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. Contribution rates based on benefit experience.

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(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.

The evidence in the record establishes that Mr. Wilkins was able to perform full-time work and available for full-time work during the two-week period of December 1, 2019 through December 14, 2019. Mr. Wilkins did not unduly restrict his availability for work by providing the 7:00 a.m. to 4:00 p.m. updated availability. Instead, Mr. Wilkins had reasonably relied upon Mr. Kostboth's statement regarding the hours during which the Foods crew would work and made himself available for work during those hours. The evidence in the record establishes that Mr. Wilkins was partially unemployed during the benefit week that ended December 7, 2019, when the employer provided him only eight hours of work and his wages were far below his \$301.00 weekly benefit amount. The evidence in the record establishes that Mr. Wilkins was temporarily unemployed during the benefit week that ended December 14, 2019, due to the employer's decision not to provide him with any work hours that week.

Mr. Wilkins is eligible for benefits for the two weeks between December 1, 2019 and December 14, 2019, provided he meets all other eligibility requirements. Because the employer elected during those two weeks not to provide the same employment from the employer that the Mr. Wilkins received during his base period, the employer's account may be charged for benefits for those two weeks.

DECISION:

The December 23, 2019, reference 02, decision is reversed. The claimant was able to work and available for work during the two weeks between December 1, 2019 and December 14, 2019. The claimant was partially unemployed during the week that ended December 7, 2019. The claimant was temporarily unemployed during the week that ended December 14, 2019. The claimant is eligible for benefits for the two weeks between December 1, 2019 and December 14, 2019, provided he meets all other eligibility requirements. The employer's account may be charged for benefits for those two weeks.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs