

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

**ANDREW J THOMAS**  
Claimant

**WALMART INC**  
Employer

**APPEAL 22A-UI-12003-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/03/22**  
**Claimant: Appellant (4)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.1A(37) – Total, Partial, and Temporary Unemployment

**STATEMENT OF THE CASE:**

On May 10, 2022, claimant Andrew J. Thomas filed an appeal from the May 4, 2022 (reference 01) unemployment insurance decision that denied benefits based on a determination that claimant was working sufficient hours to be considered employed and removed from the labor market and was not available for work. The parties were properly notified of the hearing. A telephonic hearing was held at 9:00 a.m. on Friday, June 24, 2022. The claimant, Andrew J. Thomas, participated. The employer, Walmart, Inc., did not appear or participate. Claimant's Exhibit A was received and admitted into the record without objection. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Is 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: Claimant began working for Walmart, Inc., on September 2, 1998. He currently works for the employer as a full-time forklift driver in the Mount Pleasant warehouse. Claimant opened his claim for benefits with an original claim date of April 3, 2022, after he was temporarily laid off due to a lack of work.

Claimant provided his Notice of Layoff for the hearing. (Exhibit A) This document states the layoff commenced April 3, 2022, and he was expected to end on April 17, 2022. Both claimant and his employer signed the document, indicating claimant was being temporarily laid off and would be discharged from work if he did not return upon notification from the employer that work was available. Claimant filed for benefits for two weeks during the layoff; he then returned to work and ceased filing claims.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was temporarily totally unemployed due to a lack of work. Under this status, he was not required to meet the requirements of Iowa Code section 96.4(3). The underlying decision is modified in favor of the claimant, and benefits are allowed.

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 ... temporarily unemployed as defined in section 96.1A, subsection 37, paragraph "c".*

(Emphasis added.) Iowa Code § 96.1A(37) 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.

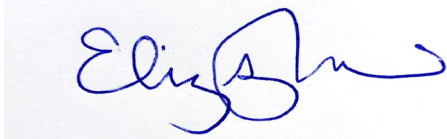
...

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.

In this case, claimant was completely unemployed and out of work for two weeks due to a lack of work for him to perform at the employer's warehouse. Claimant worked no hours and earned no wages during this two-week period. At the end of the two-week layoff, he returned to his position with the employer and immediately resumed full-time work. Based on the evidence in the record, the administrative law judge finds claimant was temporarily totally unemployed due to a lack of work. Therefore, he was not required to be able to work, available for work, and actively and earnestly seeking work pursuant to subsection 96.4(3) of the Iowa Code. Benefits are allowed.

**DECISION:**

The May 4, 2022 (reference 01) unemployment insurance decision is modified in favor of the claimant. Claimant was temporarily totally unemployed due to a lack of work from April 3, 2022, through April 16, 2022. Benefits are allowed for that two-week period.



---

Elizabeth A. Johnson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau

July 13, 2022  
Decision Dated and Mailed

lj/lj

**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. *There is no filing fee to file an appeal with the Employment Appeal Board.*

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may file a petition for judicial review in district court.

2. If you do not file an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at [www.iowacourts.gov/efile](http://www.iowacourts.gov/efile). *There may be a filing fee to file the petition in District Court.*

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: [eab.iowa.gov](http://eab.iowa.gov)**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal. *No hay tarifa de presentación para presentar una apelación ante la Junta de Apelación de Empleo.*

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si no presenta una apelación de la decisión del juez ante la Junta de Apelación de Empleo dentro de los quince (15) días, la decisión se convierte en una acción final de la agencia y tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días. Puede encontrar información adicional sobre cómo presentar una petición en [www.iowacourts.gov/efile](http://www.iowacourts.gov/efile). *Puede haber una tarifa de presentación para presentar la petición en el Tribunal de Distrito.*

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.