

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARIAM T ASAAD
Claimant

WALMART INC
Employer

APPEAL 23A-UI-05955-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/23/23
Claimant: Respondent (2R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.1A(37) – Total, Partial, and Temporary Unemployment
Iowa Admin. Code r. 871-24.23(26) – Employment at Same Hours and Wages
Iowa Code § 96.7(2)A(2) – Employer Contributions and Reimbursements

STATEMENT OF THE CASE:

On June 9, 2023, employer Walmart Inc. filed an appeal from the May 30, 2023 (reference 02) unemployment insurance decision that allowed benefits based on a determination that claimant was working in a part-time or on-call capacity when work was available. The parties were properly notified of the hearing. A telephonic hearing was held at 9:00 a.m. on Friday, June 30, 2023. Claimant Mariam T. Asaad did not participate. Employer Walmart Inc. participated through Angel Thompson, Unemployment Process Manager. Employer's Exhibits 1, 2, 3, and 4 were received and admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUES:

Whether claimant is totally, partially or temporarily unemployed.
Whether claimant is able to and available for work.
Whether claimant is still employed at the same hours and wages.
Whether employer's account is subject to charge.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for this employer on May 21, 2021. She was hired into a full-time digital personal shopper position. Subsequently, claimant switched from working full-time hours to working part-time hours. Most recently, she worked part-time hours as a digital personal shopper.

In September 2022, claimant submitted a job change request indicating she wanted to move from full-time hours to part-time hours. Supervisory employee Ehab Abdehneseh entered a comment indicating this was claimant's intent next to the job change request. (Exhibit 3) This job change request was granted in January 2023. Supervisor Sonya Gutierrez commented and

confirmed claimant's intent to move to part-time work, and claimant began working part-time hours effective January 5, 2023. (Exhibit 3)

On January 1, 2023, claimant changed her availability to four hours per week. (Exhibit 1) Claimant has control over entering the information into this system. While an individual in HR or in Thompson's position can view this information, only the claimant can enter the data and establish or adjust the availability. The employer has more than four hours of work available for claimant, should she expand her availability and accept more hours of work. The employer does not know of anything that was restricting claimant's availability for work.

Effective the week of June 4, 2023, claimant stopped showing up for work. Claimant failed to report for work for her scheduled shifts on June 5; June 12; June 19; and June 26. The employer discharged her from work on June 28, 2023, as a result. This separation has not been analyzed by IWD.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was neither totally nor partially unemployed effective April 23, 2023. Benefits are withheld.

Iowa Code section 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.

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 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 96.1A, subsection 37, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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. R. 871-24.23(16) and (26) provide:

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.

(26) 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.

Iowa Code section 96.7(2)a(2) 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.

From April 23, 2023 through the week ending June 3, 2023, claimant has been employed under the same hours and wages as she voluntarily elected to work after she was hired. Specifically, claimant requested to work part-time hours for the employer. When an employee voluntarily elects to reduce her hours from full-time to part-time, she cannot then supplement her income with unemployment insurance benefits. Benefits are denied. Inasmuch as employer is offering the same wages and hours as the employer and claimant agreed that she would work after she was hired, no benefit charges shall be made to its account for any benefits paid between April 23, 2023 and June 3, 2023.

Between June 4, 2023 and June 24, 2023, claimant was not available for work because she was not willing to work during the four hours per week that she had specifically indicated she was available for work. Claimant had given the employer an availability for scheduling that limited her to working only four hours per week. She then failed to show up for these four hours multiple weeks in a row. Claimant's lack of work performed these weeks was not the employer's fault; it was due to her own unavailability for work. Benefits are withheld.

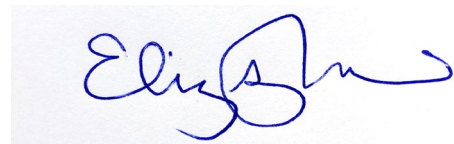
Information presented during the hearing indicated claimant separated from employment the week of June 28, 2023. This matter will be remanded for a fact-finding interview and a decision with appeal rights on claimant's separation from employment.

DECISION:

The May 30, 2023 (reference 02) unemployment insurance decision is reversed. Effective April 23, 2023, through the week ending June 3, 2023, claimant was neither totally nor partially unemployed. From June 4, 2023 through June 24, 2023, claimant was totally unemployed and not able to or available for work. Benefits are denied through the week ending June 24, 2023.

REMAND:

This matter is remanded to the Benefits Bureau with instructions to hold a fact-finding interview and issue a decision with appeal rights regarding claimant's June 28, 2023 separation from employment.



Elizabeth A. Johnson
Administrative Law Judge

July 6, 2023
Decision Dated and Mailed

scn

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
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: 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.

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 then file a petition for judicial review in district court.

2. If no one files 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 Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: 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.

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 nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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.