

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CODY B BRINKERHOFF
Claimant

WALMART ASSOCIATES
Employer

APPEAL 22A-UI-03316-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/07/20
Claimant: Appellant (2R)

Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

Cody B Brinkerhoff, the claimant/appellant filed an appeal from the January 13, 2022 (reference 02) unemployment insurance decision that denied benefits as of June 7, 2020 because Mr. Brinkerhoff was limiting the hours he could work. The parties were properly notified about the hearing. A telephone hearing was held on March 3, 2022. Mr. Brinkerhoff participated personally. The employer participated through Jared Johnson, store manager. The administrative law judge took official notice of the administrative record.

ISSUE:

Is Mr. Brinkerhoff able to and available for work?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Brinkerhoff began working for the employer on July 20, 2019. He worked as a full-time associate. He was paid about \$13.75 per hour.

Mr. Brinkerhoff did not attend work for two weeks in May 2020 due to illness. Mr. Brinkerhoff returned to work for a few days then, on advice of her doctor, did not attend work for one week. Mr. Brinkerhoff returned to work in early June 2020. While Mr. Brinkerhoff was on leave the employer took him out of the employer's system. When Mr. Brinkerhoff returned from leave, the employer reactivated him in the system. Sometimes reactivation took a day or two resulting in Mr. Brinkerhoff not being able to work until the reactivation was complete.

Upon Mr. Brinkerhoff's return to work, the employer reduced his hours to about 28 hours per week because of reduced business due to the COVID-19 pandemic. Mr. Brinkerhoff talked with his manager and human resources staff about working a different job to make up the hours. The employer told Mr. Brinkerhoff that hours were not available for him to work in a different job. Mr. Brinkerhoff reported \$0.00 in wages for the week of June 14-20, 2020.

Mr. Brinkerhoff gave the employer a two-week notice of his intention to resign, and his employment ended on June 19, 2020. Mr. Brinkerhoff told the employer that he was leaving to

work at Target. Mr. Brinkerhoff began working for Target the week of July 5, 2020. Iowa Workforce Development has not issued a decision about Mr. Brinkerhoff's eligibility for benefits based on his separation from employment with this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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:

Benefit 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(1) and (10) provide:

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

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

(17) Work is unduly limited because the claimant is not willing to work the number of hours required to work in the claimant's occupation.

To be able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. A person claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how the administrative law has resolved the disputed factual issues in this case. The administrative law judge assessed the credibility of the witnesses who testified during the hearing, considered the applicable factors listed above, and used his own common sense and experience.

Mr. Brinkerhoff was able to and available for work from June 7, 2020, the effective date of his claim, through June 19, 2020 when he resigned. The employer reduced Mr. Brinkerhoff's hours even though he was able to and available for work. Since Mr. Brinkerhoff is able to and available for work, benefits as of June 7, 2020.

DECISION:

The January 13, 2022, (reference 02) unemployment insurance decision is REVERSED. Mr. Brinkerhoff is able to and available as of June 7, 2020. Benefits are allowed, provided he is otherwise eligible.

REMAND:

The issue of Mr. Brinkerhoff's separation from employment with this employer is REMANDED (sent back) to the Benefits Bureau of Iowa Workforce Development for investigation and a decision.

This matter is also REMANDED for investigation and further action, if any, on the issue of Mr. Brinkerhoff properly reporting wages between June 7, 2020 and June 20, 2020.



Daniel Zeno
Administrative Law Judge
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March 23, 2022
Decision Dated and Mailed

dz/mh