

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MEENA GAJMER**  
Claimant

**APPEAL 20R-UI-15002-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WALMART INC**  
Employer

**OC: 04/05/20**  
**Claimant: Appellant (1/R)**

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

**STATEMENT OF THE CASE:**

Meena Gajmer (claimant) appealed a representative's August 19, 2020, decision (reference 02) that denied benefits based on her continued employment with Walmart (employer). This administrative law judge issued a decision on October 13, 2020, affirming the representative's decision. The Employment Appeal Board issued a decision of remand on November 13, 2020. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 20, 2021. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The administrative law judge took official notice of the administrative file.

**ISSUE:**

The issue is whether the claimant is eligible for total or partial unemployment benefits, still employed at the same hours and wages, whether the claimant is able and available for work and/or whether the employer's account is subject to charge.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 21, 2018, as a part-time sales associate. The employer did not promise the claimant a certain number of hours per week. Her hourly wage was \$11.96.

The claimant requested and was granted a leave of absence from April 9, 2020, through May 6, 2020, because she had Covid-19 symptoms and due to other medical issues. She returned to work on May 7, 2020, and worked approximately twenty-two hours per week.

The claimant had no income while she was on leave but reported wages. The claimant's husband heard an Agency worker say the claimant was eligible to receive unemployment

insurance benefits if she earned less than \$263.00 per week. The claimant then reported that amount of income each week after April 5, 2020. The claimant returned to work, earned her regular wage, and the claimant continued to report the same amount of income when she reported her weekly claim to the Agency.

The claimant filed for unemployment insurance benefits with an effective date of April 5, 2020. Her weekly benefit amount was determined to be \$272.00. The claimant received benefits from April 5, 2020, to the week ending August 1, 2020. This is a total of \$1,406.00 in state unemployment insurance benefits after the separation from employment. She also received \$15,500.00 in Federal Pandemic Unemployment Compensation for the sixteen-week period ending July 25, 2020.

### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.19(38) 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", subparagraph (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. Code r. 871-24.22(1)a 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.

(1) Able to work. An 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.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.23(1), (10) and (26) provide:

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

(1) An individual who is ill and presently not able to perform work due to illness.

(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.

(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.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). When employees are unable to perform work due to a medical condition, they are considered to be unavailable for work. When employees request and are granted a leave of absence, they are considered to be voluntarily unemployed. The claimant requested a medical leave of absence and the employer granted the request. The claimant is considered to be voluntarily unemployed, or unavailable for work, during the period of the leave of absence and is not eligible to receive unemployment insurance benefits from April 5, 2020, through May 9, 2020.

When employees are still employed in their part-time jobs as was agreed to at hire, they are not partially unemployed. After May 6, 2020, the claimant was still employed with the employer in her part-time job in the same manner as she was when she was hired. The claimant is not eligible to receive unemployment insurance benefits as of May 10, 2020, because she was not unemployed.

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the

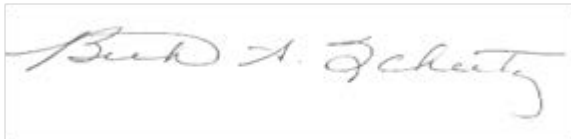
Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

**DECISION:**

The representative's August 19, 2020, decision (reference 02) is affirmed. The claimant is not able to work and available for work as of April 5, 2020. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time as the claimant is able to and available for work.

The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

A rectangular box containing a handwritten signature in cursive script, which appears to read "Beth A. Scheetz".

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Beth A. Scheetz  
Administrative Law Judge

February 4, 2021  
Decision Dated and Mailed

bas/scn