

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**KATHLENE A MEYER**  
Claimant

**APPEAL NO. 19A-UI-08437-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WALMART INC**  
Employer

**OC: 09/15/19**  
**Claimant: Respondent (2)**

Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the October 17, 2019, reference 01, decision allowed benefits to the claimant effective September 15, 2019 provided the claimant was otherwise eligible, based on the deputy's determination that the claimant was able to work, available for work, but partially unemployed. After due notice was issued, a hearing was held on November 19, 2019. Claimant Kathlene Meyer did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. Norman Merrill represented the employer. Exhibits 1 through 4 were received into evidence. The administrative law judge took official notice of the following Agency administrative records: Continued Claims (KCCO), Database Readout (DBRO) and WAGE-A.

**ISSUES:**

Whether the claimant was able to work and available for work within the meaning of the law effective September 15, 2019.

Whether the claimant was partially unemployed and/or temporarily unemployed within the meaning of the law effective September 15, 2019.

Whether the employer's account may be charged for benefits for the period beginning September 15, 2019.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Kathlene Meyer established an original claim for benefits that was effective September 15, 2019 and an additional claim for benefits that was effective September 22, 2019. Iowa Workforce Development set Ms. Meyer's weekly benefit amount at \$304.00. Ms. Meyer has made no weekly claims and has received no benefits in connection with the unemployment insurance claim. Walmart is the sole base period employer in connection with the claim. Kathlene Meyer is employed by Walmart as a full-time Self Checkout Host at the employer's Davenport store. Walmart requires employees to be available for and work 34 hours per week to maintain full-time status. Walmart's work weeks begin on Saturday and end on Sunday. Ms. Meyer began her employment with Walmart employment in 2017. Since December 30, 2019, Ms. Meyer's hourly wage has been \$11.22.

Ms. Meyer's establishment of the original claim for benefits that was effective September 15, 2019 corresponded with her request to take the work week of September 14-20, 2019 off as paid time off (PTO). Based on Ms. Meyer's request to have that week off, the employer did not schedule Ms. Meyer to work any hours that week.

**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.

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 Admin. Code r. 871-24.23(10) provides:

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.

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.

Iowa Administrative Code rule 871-24.2.(1)(g) provides as follows:

(g). No continued claim for benefits shall be allowed until the individual claiming benefits has completed a continued claim or claimed benefits as otherwise directed by the department.

(1) The weekly continued claim shall be transmitted not earlier than 8 a.m. on the Sunday following the Saturday of the weekly reporting period and, unless reasonable cause can be shown for the delay, not later than close of business on Friday following the weekly reporting period.

The evidence in the record fails to establish that Ms. Meyer was available for work or that she was temporarily or partially unemployed effective September 15, 2019. Ms. Meyer has made no weekly claims. The employer has not been charged for benefits. Ms. Meyer has presented no evidence to meet her burden of proving that she was available for work, temporarily unemployed, or partially unemployed for the period beginning September 15, 2019. The evidence in the record establishes that when Ms. Meyer established her claim for benefits she was on a week-long leave of absence that she requested and the employer approved. In other words, effective September 15, 2019, Ms. Meyer was voluntarily unemployed. Benefits are

denied effective September 15, 2019. In the event Ms. Meyer reactivates her claim at a later date and commences making weekly claims, her availability for work and whether she is partially or temporarily unemployed will be revisited at that time in connection with those future claim weeks.

**DECISION:**

The October 17, 2019, reference 01, decision is reversed. The claimant was on an approved leave of absence during the week in which she established the original claim for benefits that was effective September 15, 2019. Effective September 15, 2019, the claimant was not available for work within the meaning of the law. Nor was the claimant partially unemployed or temporarily unemployed within the meaning of the law. Benefits are denied effective September 15, 2019. Because there were no weekly claims, the reach of this decision is limited to the week of September 15-21, 2019. In the event the claimant reactivates her claim at a later date and commences making weekly claims, her availability for work and whether she is partially or temporarily unemployed will be revisited at that time in connection with those future claim weeks.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/scn