

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DAVID A MILLIGAN
Claimant

WALMART INC
Employer

APPEAL NO. 18A-UI-06872-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/27/18
Claimant: Appellant (2)

Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated June 21, 2018 reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on July 11, 2018. Claimant participated personally. Employer participated by Johnathan Ford.

ISSUE:

The issue in this matter is whether claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant worked as a department manager for employer. Earlier this year, claimant was found to have congenital heart failure. On May 16, claimant forwarded to employer a doctor's restriction stating claimant was not to be lifting more than 20 pounds as a part of his employment. Claimant continued working his same job from May 16, 2018 to May 24, 2018. On May 24, 2018, employer, through Sedgwick (its provider of medical guidance) told claimant that he could no longer work at his job as a department manager. Employer, through its provider, stated that employer would look for employment opportunities for claimant at or below his current salary level. Claimant agreed to this as he hoped to continue working. Employer's human resources officer stated to claimant that employer currently had no jobs available for claimant, but that they would be in touch with him should a job open up. Employer has not been in touch with claimant since the initial meeting.

Employer did testify that at all times since claimant received his weight restriction that there have been jobs available as a cashier. Claimant stated he was willing to work as a cashier.

REASONING AND CONCLUSIONS OF LAW:

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 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(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.

Claimant in this matter was able to continue working his job for over a week after a medical restriction was forwarded to employer. Employer then decided to turn around that allowance and not let claimant continue working at his job, but allow claimant to work other jobs at equal or lower wages. Claimant agreed to this, but employer did not place claimant in another job, although claimant at all relevant times was able and available for work and employer had jobs available that fit within claimant's work restrictions.

DECISION:

The decision of the representative dated June 21, 2018, reference 01 is reversed. Claimant is eligible to receive unemployment insurance benefits, effective May 27, 2018, provided claimant meets all other eligibility requirements.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn