

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**ROSS K DHABOLT
3405 WOODLAND AVE APT 58 C
WEST DES MOINES IA 50266**

**WAL-MART STORES INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-07681-DWT
OC: 05/16/04 R: 02
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

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.

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 are based.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 – Ability to and Availability for Work

STATEMENT OF THE CASE:

Ross K. Dhabolt (claimant) appealed a representative's July 9, 2004 decision (reference 03) that concluded he was not eligible to receive unemployment insurance benefits because he was unable to work for Wal-Mart Stores, Inc. (employer) as of May 14, 2004 because of a non-work related work restriction. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 10, 2004. The claimant participated in the hearing. Matt Meyer, an assistant manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant ineligible to receive unemployment insurance benefits as of May 14 because he has a non-work related work restriction?

FINDINGS OF FACT:

The claimant started working for the employer on June 10, 2003. He worked as a full-time bike assembler. The job required the claimant to lift more than 30 pounds.

On April 30, 2004, the claimant hurt his back at home. His doctor restricted him from working because of severe back strain until May 4. The employer considered the claimant's no-work restriction as a leave of absence. On May 4, 2004, the claimant was released to return to work with a 25 to 30-pound weight restriction. The employer would not accommodate the claimant's work restriction by giving him light-duty work and indicated he could return to work when he no longer had a weight restriction.

The claimant established a claim for unemployment insurance benefits during the week of May 16, 2004. He looked for retail work. The claimant started another job on or about July 17, 2004. The claimant's 25-pound work restriction was not eliminated until late July 2004.

REASONING AND CONCLUSIONS OF LAW:

A claimant is eligible to receive unemployment insurance benefits if he is unable to or unavailable for work. Iowa Code §96.4-3. The law also provides when a claimant must leave employment because of non-work-related injury, notifies the employer that he is unable to work but upon recovery that is certified by a physician, offers to return to work and perform his regular job but no comparable or suitable work is available, the claimant is qualified to receive unemployment insurance benefits. Iowa Code §96.5-1-d. (Emphasis supplied.)

For unemployment insurance purposes, the claimant has not satisfied all the requirements of Iowa Code §96.5-1-d. When the claimant offered to return with his 25 to 30-pound weight restriction, he was unable to perform his regular job. The claimant wanted the employer to make accommodations for him, but the employer was unwilling to do this. As a result of the claimant's work restrictions, he was still on a leave of absence.

Under the facts of this case, the claimant could not return to work as of May 16 because he was unable to perform his job. Therefore, for unemployment insurance purposes, he was unable to work and is not eligible to receive unemployment insurance benefits as of May 16, 2004.

DECISION:

The representative's July 9, 2004 decision (reference 03) is affirmed. The claimant is not eligible to receive unemployment insurance benefits as of May 16, 2004, because he was not able to perform his job as a bike assembler with the work restrictions he had from May 16 to late July 2004. The claimant's ineligibility remains until he reopens his claim and establishes that he is able to and available for work.

dlw/tjc