

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

SHARON G SMITH  
357 – 12<sup>TH</sup> ST  
EAST MOLINE IL 61244

WAL-MART STORES INC  
C/O FRICK UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-09030-HT  
OC: 07/11/04 R: 12  
Claimant: Appellant (2-R)

**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, 4<sup>th</sup> 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 is 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 – Able and Available

STATEMENT OF THE CASE:

The claimant, Sharon Smith, filed an appeal from a decision dated August 16, 2004, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on September 14, 2004. The claimant participated on her own behalf. The employer, Wal-Mart, participated by Store Tony Ciabattoni.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Sharon Smith began employment with Wal-Mart on September 11, 2002. She was a full-time overnight stocker.

On June 30, 2004, the claimant experienced swelling and tenderness in her right arm. She went to her physician who diagnosed tendonitis and released her to return to work with restrictions of no lifting with the right arm. The doctor's note was provided to the overnight stock supervisor, Yvonne. The supervisor told the claimant Wal-Mart did not allow for any light duty and if she was going to be absent for more than five days, she would need to take a leave of absence.

The claimant's doctor provided the information for the leave of absence, and stated the injury was work-related. This diagnosis was subsequently affirmed by company physician. Ms. Smith was returned to work with restrictions on July 23, 2004 and resumed her duties on July 28, 2004.

The claimant has been separated from this employment as of September 11, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is eligible for benefits. The judge concludes she is.

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".

The claimant was able and available to work with restrictions beginning June 30, 2004. The unavailability of light duty due to a work-related injury does not mean there was no work she could perform, only that the employer did not make it available to her. There was no need for her to take a leave of absence except by operation of the employer's policies. The records indicate she was able and available for work had the employer been prepared to accommodate her restrictions.

The issue of the claimant's separation from employment shall be remanded for determination.

#### DECISION:

The representative's decision of August 16, 2004, reference 01, is reversed. Sharon Smith is qualified for benefits, provided she is otherwise eligible.

The issue of the claimant's separation from employment is remanded to the Claims Section for determination.

bgh/tjc