

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALISHA M BROWER
Claimant

APPEAL NO. 09A-UI-16983-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 09-27-09
Claimant: Appellant (1)

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 3, 2009, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on December 16, 2009. The claimant did participate. The employer did not participate.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant is still employed for employer but has not been working since she sustained a non-work-related automobile accident in August 2009 that left her with work restrictions. When her work restrictions that were imposed on her due to the car accident were lifted, her obstetrician imposed a ten-pound lifting restriction and a restriction against repetitive bending or twisting due to the claimant's pregnancy. The claimant is due to deliver the baby at the end of February 2010. The employer will not allow the claimant to return to work until she has a complete release with no restrictions what so ever.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work

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".

871 IAC 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.

871 IAC 24.23(35) provides:

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

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

Inasmuch as the injury and the pregnancy were not work-related and the treating physician has not released the claimant to return to work without work restrictions, the claimant has not established ability to work. Benefits are withheld until such time as the claimant obtains a full medical release to return to work from her obstetrician due to her current pregnancy restrictions.

DECISION:

The representative's decision dated November 3, 2009, reference 02, is affirmed. The claimant is not able to work and available for work effective September 27, 2009. Benefits are withheld until such time as the claimant obtains a full medical release to return to work.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css