

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEEANN L HILL

Claimant

APPEAL NO: 08A-UI-01579-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

**OC: 12/30/07 R: 01
Claimant: Appellant (1)**

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Leeann Hill (claimant) appealed a representative's February 8, 2008 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was unable to work due to pregnancy for Wal-Mart Stores (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 3, 2008. The claimant participated personally. The employer participated by Steve Johnson, General Manager, and Terri Bailey, Personnel Coordinator. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant is available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 26, 2005, as a full-time check out supervisor.

On or about December 17, 2007, the claimant's physician indicated she was not to work until further notice. On December 21, 2007, the claimant completed a Request for Leave of Absences. The claimant filed her request for unemployment insurance benefits with an effective date of December 30, 2007. On January 3, 2008, the claimant's physician allowed her to return to work but restricted the claimant from lifting over 20 pounds. The employer had no work for her because the claimant's job description stated she was to be able to move 30 pounds without assistance. On January 7, 2008, the claimant's physician allowed her to return to work but restricted the claimant from lifting over 30 pounds. The physician indicated that the claimant would be limited to lifting not more than 20 pounds further in her pregnancy. The employer returned her to work. On January 17, 2008, the claimant completed a Request for Leave of Absence with a proposed return to work date of June 1, 2008. The claimant's child is due on May 3, 2008.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not able and available for work.

871 IAC 24.23(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

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 24.22(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.

m. Restrictions and reasonable expectation of securing employment. An individual may not be eligible for benefits if the individual has imposed restrictions which leave the individual no reasonable expectation of securing employment. Restrictions may relate to type of work, hours, wages, location of work, etc., or may be physical restrictions.

The reason for the absence was pregnancy and, therefore, non-work-related. The treating physician had released the claimant to return to work with restrictions, the claimant has not established ability to work. The employer had no work available to accommodate the claimant's work restrictions of 20 pounds.

When an employee requests and is granted time off, she is considered to be unavailable for work. The claimant requested a leave of absence and the employer granted her request. The change in hours was initiated by the claimant. She is considered to be unavailable for work while on leave. The claimant is disqualified from receiving unemployment insurance benefits due to her unavailability for work.

DECISION:

The representative's February 8, 2008 decision (reference 01) is affirmed. The claimant is disqualified from receiving unemployment insurance benefits because she is not available for work with the employer.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs