

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

JENNIFER E LAUGHLIN
APT 19
3913 HUBBELL AVE
DES MOINES IA 50317

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

Appeal Number: 06A-UI-00036-DWT
OC: 11/13/05 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 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 – Ability to and Availability for Work

STATEMENT OF THE CASE:

Jennifer E. Laughlin (claimant) appealed a representative's December 23, 2005 decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits because Wal-Mart Stores, Inc. (employer) approved the claimant's request for a leave of absence and the claimant was not able to work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 18, 2005. The claimant participated in the hearing. Ryan Oshell, a co-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:

Did the claimant request a leave of absence for an injury that was not work-related?

FINDINGS OF FACT:

The claimant started working for the employer on August 24, 2004. The claimant worked as a full-time stocker. In June 2005 the claimant injured her ankle. The injury was not work-related. The claimant requested a leave of absence to recover from this injury. The employer granted the claimant's medical leave.

In October 2005, the claimant's doctor released her to work part time with work restrictions. The employer accommodated the claimant's work restrictions and allowed her to work as a part-time people greeter. The employer allowed the claimant to sit at this job. After the claimant worked part-time for two weeks, her doctor released her to work full-time with the same work restrictions. The employer accommodated the claimant's work restrictions for working full time for a short time. On November 16, 2005, the employer informed the claimant the employer could no longer accommodate the claimant's work restrictions. The employer then told the claimant she had to go home, but she could request a leave of absence. The claimant did not want to be discharged, so she signed the paperwork requesting a leave of absence.

As of the date of the hearing, the claimant can work full-time, but she still has work restrictions. The claimant is not yet able to work as a stocker. The claimant's work restrictions prohibit the claimant from standing for more than an hour, she has a weight restriction, and her doctor wants her to sit while working.

The employer still considers the claimant an employee. The claimant's leave of absence is valid for a year. When the claimant no longer has any work restrictions or can perform her job as a stocker, the employer will schedule the claimant to work.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for unemployment insurance benefits, she must be able to and available for work Iowa Code § 96.4-3. The law presumes a claimant is not eligible to receive benefits when the employer and employee negotiate a leave of absence because the claimant is voluntarily unemployed. 871 IAC 24.22(j) and 871 IAC 24.23(10). The claimant did not want to go on a leave of absence, but she is unable to return to her full-time job as a stocker. The claimant wants to work as a full-time people greeter. The claimant's work restrictions unduly limit the work she is capable of doing. 871 IAC 24.23(18). As a result of the work restrictions and the claimant's ability to work only a certain job, not her "regular job," the claimant is not eligible to receive unemployment insurance benefits as of November 13, 2005. When the claimant's work restrictions change, she can reopen her claim. If she establishes she is then able to and available for work, she may then be eligible to receive unemployment insurance benefits.

DECISION:

The representative's December 23, 2005 decision (Reference 02) is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because with her current work restrictions she is looking for a tailor-made job and has unduly restricted her ability to work. Therefore, the claimant is not able to or available for work. As of November 13, 2005, the claimant is not eligible to receive unemployment insurance benefits. When the claimant's work restrictions change, she can reopen her claim. If she then establishes her availability to work

without looking for a tailor-made job and is no longer on a leave of absence, the claimant may then be eligible to receive benefits.

dlw/kjw