

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JHIHS HANI S EVANS**

Claimant

**APPEAL NO: 11A-UI-07186-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**

Employer

**OC: 04/17/11**

**Claimant: Appellant (2)**

Section 96.4-3 – Able and Available  
871 IAC 24.22(2)j – Leave of Absence

**STATEMENT OF THE CASE:**

Jhijs Hani S. Evans (claimant) appealed a representative's May 25, 2011 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits in connection with Wal-Mart (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 23, 2011. The claimant participated in the hearing and was represented by Diane Wilson, attorney at law. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. During the hearing, Claimant's Exhibits A and B were entered into evidence. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant eligible for unemployment insurance benefits by being able and available for work? Was there period of voluntary unemployment through a leave of absence?

**FINDINGS OF FACT:**

The claimant started working for the employer on July 9, 2005. She worked part time as a cashier in the employer's Mason City, Iowa store. As of the date of the hearing, her last day of work was April 7, 2011.

The claimant suffered an injury to her left shoulder in March 2010. As a result, she was on a leave of absence until sometime in May 2010. From sometime in May 2010 through sometime in February 2011, the employer covered the claimant's injury as work connected and eligible for workers' compensation; the employer did provide light-duty work for the claimant through that period.

No evidence was provided to explain why the employer ceased to consider the claimant's injury as covered under workers' compensation or entitled to light-duty accommodation after February 2011. On March 23 the claimant's doctor had indicated that the claimant should "specifically

avoid doing the cash register responsibilities as she has to use that left upper extremity in a repetitive, awkward position which exacerbates this underlying condition.” On or about April 7 the claimant expressed to her supervisor that she was still supposed to be doing something other than the regular cashier position. As a result, the employer caused the claimant to have her doctor complete a “physicians assessment for work capabilities.” The doctor completed the form on April 8. The doctor indicated that the claimant could not continue in her current job, and could not do repetitive lifting or use of the left arm, but indicated she could do the employer’s jobs of “zoning – parking lot,” “people greeter (entrance, exit, garden)”, “cashier (self-checkout,)” and “zoning – merchandise on sales floor.”

Because the claimant’s doctor had indicated that she could not continue in her current job, the employer would not allow the claimant to return to work after April 7 in any position. It is unclear whether the employer considers the claimant to be on some form of leave of absence or whether it considers there to have been a permanent separation.

### **REASONING AND CONCLUSIONS OF LAW:**

For each week for which a claimant seeks unemployment insurance benefits, she must be able and available for work. Iowa Code § 96.4-3. In general, an employee who is temporarily separated from her employment due to being on a leave of absence is not “able and available” for work during the period of the leave, as it is treated as a period of voluntary unemployment. 871 IAC 24.22(2)j; 871 IAC 24.23(10).

The claimant’s current unemployment is due to her effectively being on a leave of absence due to an asserted work-related medical issue. For the period of unemployment to be attributable to the employer, factors or circumstances directly connected with the employment must either cause or aggravated the claimant’s condition so as to make it impossible for the employee to continue in employment; the claimant “must present competent evidence showing adequate health reasons to justify termination [and] before quitting [must] have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated.” Iowa Code § 96.5-1-d; 871 IAC 24.26(6)b. The claimant has complied with these provisions.

Another aspect of the able and available requirement is that the claimant be physically and mentally able to work. 871 IAC 24.2(1). To be found physically and able to work, “[a]n 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.” Sierra v. Employment Appeal Board, 508 N.W.2d 719, 721 (Iowa 1993); Geiken v. Lutheran Home for the Aged, 468 N.W.2d 223 (Iowa 1991); 871 IAC 24.22(1). The claimant has demonstrated that she is able to work in some gainful employment. Benefits are allowed, if the claimant is otherwise eligible.

**DECISION:**

The representative's May 25, 2011 decision (reference 01) is reversed. The claimant is able and available for work effective April 8, 2011, and the period of at least temporary separation is a period of voluntary unemployment attributable to the employer. Benefits are allowed, if the claimant is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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