

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

SHIRLEY A BALL
LOT #65
3632 – 235TH AVE
KEOKUK IA 52632

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

Appeal Number: 04A-UI-11735-DT
OC: 09/19/04 R: 04
Claimant: Respondent (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 - Able and Available

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. (employer) appealed a representative's October 20, 2004 decision (reference 01) that concluded Shirley A. Ball (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 24, 2004. The claimant participated in the hearing. Chris Rose appeared on the employer's behalf and presented testimony from one other witness, Debbie Kisor. 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:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant started working for the employer on October 5, 1994. She worked full time as an inventory control specialist in the employer's Keokuk, Iowa, store. Her most recent day of work was April 1, 2004.

The claimant twisted her knee at work on March 7, 2004. While it was sore, she did not believe it was serious. When the knee still hurt on March 8, she went to her personal physician. She went in for work on March 8 and gave the assistant manager a doctor's excuse, telling the assistant manager that it was from twisting her knee at work the prior day, but still saying she did not think it was serious. As the week went on, the knee did not improve, and the claimant's doctor indicated it might be something more serious. She filed a formal report of the injury on March 12, 2004.

The claimant's doctor had her on light duty through April 1, 2004. As of April 2, the claimant was taken off work completely and was referred to a specialist. She applied for and received temporary disability through the end of August 2004. On September 16, the specialist to which the claimant had been referred issued a claimant a return to work release for light duty with restrictions. The claimant presented this release to the employer; however, the employer declined to provide the claimant with light-duty work, as the employer was contesting whether the injury was work related and whether it was covered by workers' compensation. Again on September 28, the specialist issued another partial release for light duty with restrictions, which the claimant again gave to the employer. The two September doctor's releases recited that the injury was "work-related." The employer again declined to provide the light duty work. The claimant could have performed light duty work with the employer with restrictions, although the employer would have had to make accommodations.

The claimant had knee surgery on October 15, 2004 and was taken off work by her doctor at that time. A separate representative's decision also issued on October 20, 2004 (reference 02) concluded that the claimant was not able and available for work and was not eligible for unemployment insurance benefits effective the week beginning October 17, 2004 until she is further released as available for work.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is currently eligible for unemployment insurance benefits by being able and available for employment.

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".

To be found 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. There is competent medical evidence that the claimant had a work-related medical condition; the employer was aware of the claimant's condition, but declined to provide accommodations for her restrictions. Therefore, the claimant has satisfied the conditions for receiving benefits under 871 IAC 24. 26(6)b even though she has some work restrictions. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's October 20, 2004 decision (reference 01) is affirmed. The claimant was able to work and available for work effective September 19, 2004 through October 15, 2004. The claimant was qualified to receive unemployment insurance benefits during that time.

ld/tjc