

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN MORSE**  
Claimant

**APPEAL NO. 08A-UI-00847-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 11/25/07 R: 04**  
**Claimant: Appellant (4)**

Section 96.4-3 - Able and Available for Work

**STATEMENT OF THE CASE:**

John Morse (claimant) appealed an unemployment insurance decision dated January 18, 2008, reference 03, which held that he was not eligible for unemployment insurance benefits because he was not medically able to perform work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 11, 2008. The claimant participated in the hearing. The employer elected not to participate. Claimant's Exhibit A was admitted into evidence. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the claimant is able and available to work?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant submitted medical documentation that he was previously on a medical leave of absence but is now medically able to work. The medical documentation signed on January 10, 2008 indicates the claimant has a chronic medical condition that flares up periodically. He disclosed this information to the employer at the time of hire.

**REASONING AND CONCLUSIONS OF LAW:**

The issue to be determined is whether the claimant is able and available for work. In order for an individual to be eligible to receive unemployment insurance benefits, the evidence in the record must establish that he is able to work, available for work, and earnestly and actively seeking work. See Iowa Code § 96.4(3) and 871 IAC 24.22.

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.

The claimant has the burden of proof in establishing his ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). The evidence does establish that the claimant is able and available to work as of January 10, 2008.

#### **DECISION:**

The unemployment insurance decision dated January 18, 2008, reference 03, is modified in favor of the appellant. The claimant meets the availability requirements of the law as of January 13, 2008.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw