

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHERI L DALTON
Claimant

APPEAL NO. 07A-UI-10246-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 09-30-07 R: 02
Claimant: Appellant (2)

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 26, 2007, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on November 26, 2007. The claimant did participate. The employer did not participate.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: The claimant began suffering dizzy spells and was seen by several physicians. She was diagnosed as suffering from a chronic inner ear infection. The claimant missed work when the infection would flare up. The claimant was not taken off work by any physician but did miss work time and may miss time in the future due to flare up of her inner ear infection.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work.

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".

The claimant suffers from chronic inner ear infection that flares up from time to time. She has not been taken off work by a physician. She has no restrictions from any physician that prohibit her from working. The claimant may miss work from time to time due to illness, as most people do, but she is physically able to and available for work. Accordingly, benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The October 26, 2007, reference 02, decision is reversed. The claimant is able to work and available for work effective September 30, 2007. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw