

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH J COAN
Claimant

APPEAL NO. 11A-UI-05298-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 02-20-11
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 5, 2011, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on May 19, 2011. The claimant did participate. The employer did participate through Seth Fitch, assistant manager.

ISSUE:

Was the claimant able to and available for work effective February 20, 2011?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as worker in the vision center beginning on May 24, 2007 through the date of hearing, as he remains employed. The claimant twisted his ankle in the parking lot on the ice on January 29, 2011. He sought medical treatment and his physician diagnosed a stretched or torn tendon and placed his foot in a soft cast that appeared as an open toed boot. He was off work until February 22, 2011. After that date, the claimant was able to work performing all of his job duties but was not allowed to do so by the employer, as they do not allow anyone to work with an open toed boot. The claimant sought accommodation under their policy but was told by Tammy Cochran that it could only be granted by the home office in Arkansas. On February 22 the claimant had a note from his physician that allowed him to return to work so long as he wore the open-toe boot. When he was in the store, he checked on whether the employer had heard anything about his office. He was told they had not. Since he was physically able to work but the employer would not allow him to do so, he sought unemployment insurance benefits with an effective date of February 20, 2011. He returned to the store the week after having filed his claim and was told by the store manager, Joe Becker, that he could return to work with the boot. Mr. Becker told him that he had the authority to grant the accommodation requested and that since the claimant was not working the shipping area but in the vision center, there was no reason he could not return to work. The claimant received one week of benefits for the week ending February 26, 2011, when the employer would not allow him to work with the open toe soft cast boot.

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 effective February 20, 2011.

Iowa Code § 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.

871 IAC 24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

Inasmuch as the treating physician had released claimant to return to work with only the restriction that he wear the soft open-toe cast and the employer chose not to accommodate that restriction for one week, despite the fact that they could have accommodated it during that week if they so chose, claimant is able to and available for work. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated April 5, 2011, reference 02, is reversed. The claimant is able to work and available for work effective February 20, 2011. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw