

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NICHOLE KRUSE**  
Claimant

**APPEAL NO: 13A-UI-07251-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 05/19/13**  
**Claimant: Appellant (2/R)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Nichole Kruse (claimant) appealed a representative's June 14, 2013 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was unable to work with Wal-Mart Stores (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 22, 2013. The claimant participated personally. The employer participated by Jason Rainboth, assistant Manager, and Elizabeth Meyer, Personnel Training Coordinator. The claimant offered and Exhibit A was received into evidence.

**ISSUE:**

The issue is whether the claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from April 2 to May 19, 2013. The claimant provided the employer with a note from her doctor dated May 20, 2013, indicating she could not lift anything greater than 40 pounds during her pregnancy. The claimant's due date is January 7, 2014. The employer told the claimant there was no work for her any longer due to her restriction. The claimant began working at Goodwill on July 29, 2013.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes the claimant is able to 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".

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 is restricted from lifting over 40 pounds. Other than this restriction the claimant can perform work in a number of positions which do not require lifting over 40 pounds. The claimant has met her burden of proof to show that she has the ability to work.

The issue of the claimant's separation from employment is remanded for determination.

**DECISION:**

The representative's June 14, 2013 decision (reference 01) is reversed. The claimant has met her burden of proof to show that she has the ability to work. The issue of the claimant's separation from employment is remanded for determination.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs

