

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

REGINA FOREMAN
Claimant

WALMART INC.
Employer

APPEAL 21A-UI-11774-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/07/21
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available – Benefits Eligibility Conditions

STATEMENT OF THE CASE:

Claimant filed an appeal from the April 27, 2021 (reference 03) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on July 15, 2021 at 3:00 p.m. Claimant participated. Employer participated through Stacy Vannoni, Human Resources Manager. No exhibits were admitted.

ISSUES:

Whether claimant is able to and available for work.
Whether claimant was on an approved leave of absence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began her employment as a part-time Customer Host for Walmart on March 3, 2020. In November 2020, claimant had surgery for a non-work-related injury or illness. Claimant was not released to return to work for several months. Claimant was initially released to return to work with restrictions. Employer could not accommodate claimant's restrictions. Claimant filed an initial claim for unemployment insurance benefits effective March 7, 2021. Claimant was released to return to work without restrictions effective July 1, 2021. Claimant returned to work for Walmart on July 1, 2021 and has worked her regular hours since.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not able to and available for work. Benefits are denied.

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".

Iowa Admin. Code r. 871-24.22(1) 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.

Iowa Admin. Code r. 871-24.23(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 medical practitioner and has not been released as being able to work.

An individual claiming benefits has the burden of proof that she is be able to and available for work. Iowa Admin. Code r. 871-24.22.

Claimant's medical condition was not work-related. Employer is not required to accommodate a non-work-related injury or illness. Claimant was not released to return to work without restrictions until July 1, 2021. Therefore, claimant has not established that she was able to work her regular job as a Customer Host for Walmart from March 7, 2021 through July 1, 2021. Accordingly, claimant is not eligible for unemployment insurance benefits.

DECISION:

The April 27, 2021 (reference 03) unemployment insurance decision is affirmed. Claimant was not able to or available for work. Benefits are denied effective March 7, 2021.



Adrienne C. Williamson
Administrative Law Judge
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July 22, 2021
Decision Dated and Mailed

acw/lj