

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

LINDA K WALLACE
510 MERIDIAN ST
TIPTON IA 52772

WAL-MART STORES INC
c/o FRICK UC EXPRESS
P O BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-01300-HT
OC: 01/04/04 R: 04
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant, Linda Wallace, filed an appeal from a decision dated February 4, 2004, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on February 27, 2004. The claimant participated on her own behalf. The employer, Wal-Mart, participated by Store Manager Kathy Karpenski.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Linda Wallace began employment with Wal-Mart on May 17, 1999. From September 19 until December 31, 2003, she was on medical leave for a nonwork-related condition. On December 19, 2003, she provided a note from her doctor which released her to return to work without restrictions effective January 1, 2004. The employer did not have a position available for her until February 21, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is not.

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 was able and available to return to work effective January 1, 2004, but there was no position available to her at that time. If the employer extended her leave of absence it was not at her request but in order to allow Wal-Mart to find a position for her.

DECISION:

The representative's decision of February 4, 2004, reference 01, is reversed. Linda Wallace was able and available for work beginning January 1, 2004.

bgh/d