

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TREVIANA S MARTIN
Claimant

APPEAL NO: 14A-UI-00766-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 12/15/13
Claimant: Appellant (1)

Section 96.4-3 – Able and Available
871 IAC 24.23(1) – Unable to Work/Injury or Illness

STATEMENT OF THE CASE:

The claimant appealed a department decision dated January 16, 2014, reference 02, that held she was unable to perform work due to injury as of December 15, 2013, and benefits are denied. A telephone hearing was held on February 12, 2014. The claimant participated. The employer chose not to participate. Employer Exhibit 1 was received as evidence.

ISSUE:

Whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The claimant was hired on April 11, 2012 and last worked for the employer as a part-time processor at a Davenport, Iowa store on December 8, 2013. The claimant was injured in an auto accident on December 9 and she sought medical treatment. She informed the employer about the accident and she made daily calls to the store manager to report she could not come to work due to her injury.

The manager told claimant on December 13 she would need to talk to personnel about her absence because she had missed work more than three days. Personnel told claimant she would have to take a leave of absence due to the length of her absence.

Claimant saw her doctor on December 16. The doctor imposed work restrictions that restricted her from lifting more than 20 pounds and no bending or twisting. Claimant went to the store with these restrictions on December 18 and she was hoping there would be light duty work as she could not do her regular job without some accommodation.

The employer advised claimant it had no light duty job for her and she would need to remain off work until she received an unrestricted work release from her doctor that allowed her to return to her normal job.

The employer representative submitted a written statement it would not participate in this hearing.

REASONING AND CONCLUSIONS OF LAW:

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 24.23(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

The administrative law judge concludes claimant is not eligible for benefits December 15, 2013, because she does not meet the availability requirements of the law.

Claimant is not able to perform all of her job duties as a part-time processor due to medically imposed work restrictions. Since this is a non-work-related injury situation, the employer is not obligated to accommodate claimant in any manner to perform her regular job duty and it is not required to provide a light duty job.

The employer has not terminated claimant's employment. When claimant receives an unrestricted work release, she may return to employment. If the employer fails to re-employ claimant, she may file an unemployment claim at that time.

DECISION:

The department decision dated January 16, 2014, reference 02, is affirmed. Claimant does not meet the availability requirements of the law as of December 15, 2013. Benefits are denied.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs