

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEPHANIE LEUGERS
Claimant

APPEAL 15A-UI-09428-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 07/19/15
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(1) – Able to Work - illness, injury or pregnancy
Iowa Admin. Code r. 871-24.23(35) – Availability Disqualifications

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 31, 2015, (reference 01) unemployment insurance decision that denied benefits based upon being unable or unavailable for work. The parties were properly notified about the hearing. A telephone hearing was held on September 8, 2015. Claimant participated. Employer did not participate.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a sales floor associate from September 27, 1994, and was separated from employment from June 29 through August 10, 2015, on unpaid leave.

On June 29, 2015, claimant underwent surgery for a non-work-related condition. On July 13, 2015, claimant's doctor released her to return to work with a ten-pound lifting restriction. However, employer would not allow claimant to return to work until her doctor released her from all restrictions. Claimant's doctor released her to return to work on August 10, 2015, with no restrictions. Claimant returned to work on August 10, 2015.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work from June 29, 2015, through August 10, 2015.

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(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.

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.

Inasmuch as the medical condition is not work related and the treating physician did not release the claimant to return to work without restriction until August 10, 2015, she has not established her ability to work while still an employee of employer effective June 29 through the week ending August 10, 2015. While she may have been able to perform light work duties, the employer is not obligated to accommodate a non-work-related medical condition, and since claimant had not been released to perform her full work duties until August 10, 2015, she is not considered able and available for work from June 29 through August 10, 2015.

DECISION:

The July 31, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant was not able to work and available for work from June 29 through August 10, 2015. Benefits are denied for the time period in question.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

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