

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRANDON D GASAWAY**  
Claimant

**APPEAL NO. 09A-UI-19096-VS**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 11/08/09**  
**Claimant: Appellant (2)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated December 15, 2009, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on April 5, 2010, in Davenport, Iowa. Claimant participated. Jessica Johnson and Bobbie Gasaway were witnesses for the claimant. The employer notified the agency that it was not participating in the hearing. The record consists of the testimony of Brandon Gasaway; the testimony of Jessica Johnson; and the testimony of Bobbie Gasaway.

**ISSUE:**

Whether the claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked as a full-time stockperson for the Wal-Mart located in Muscatine, Iowa. In June 2009, the claimant was involved in a motorcycle accident that was non-work-related. He was able to work after the injury and continued to see a physician for foot pain. On or about August 8, 2009, the claimant was placed in a walking boot. No restrictions were placed on the claimant by his physician. He reported to work and was able to do his duties, despite the walking boot. The employer, however, forced the claimant to take a medical leave, even though he had no work restrictions. The claimant did have to use crutches from November 17, 2009 to December 17, 2009, but he was able to do many jobs at Wal-Mart, such as cashier and greeter. The claimant eventually voluntarily resigned his position with Wal-Mart on February 10, 2010. He was never allowed to return to work by Wal-Mart.

## REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113) provides as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

The Iowa Supreme Court has ruled that where an employer places an employee on an involuntary leave of absence due to the employee's health condition, the separation from the employment is to be deemed a discharge and that the person's work ability and work availability must be assessed. See Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989).

The evidence in this case established that the claimant was never placed on work restrictions by his employer. He did have to use a walking boot to stabilize his foot and crutches for approximately four weeks. 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 and (2) provide:

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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, [able](#), and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services

The claimant established his ability to work as of November 8, 2009. The claimant credibly testified that he could have done his regular job even though he used a walking boot. The claimant also credibly testified that he could have done most of his regular duties even for the four-week period that he used crutches. No physician ever placed any work restrictions on the claimant. The claimant has shown that he was able and available for work starting November 8, 2009. Benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated December 15, 2009, reference 02, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible. The claimant was able and available for work starting November 8, 2009.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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