

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY R WOLFE
Claimant

APPEAL NO. 08A-UI-02350-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 01/27/08 R: 04
Claimant: Appellant (2)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Timothy Wolfe filed an appeal from a representative's decision dated March 7, 2008, reference 01, which denied benefits on a finding that he was on a requested leave of absence and, therefore, voluntarily unemployed. After due notice was issued, a hearing was held by telephone on March 25, 2008. Mr. Wolfe participated personally. The employer opted not to participate in the hearing.

ISSUE:

At issue in this matter is whether Mr. Wolfe satisfied the availability requirements of the law as of January 27, 2008.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Wolfe began working for Wal-Mart in June of 2005 and last worked on December 21, 2007. He was last assigned to work in sporting goods. He was notified on or about December 21 that he was being transferred to a cashier's position. Mr. Wolfe told the employer he could not work in a cashier's position because of the prolonged standing and the twisting involved.

Mr. Wolfe has a service-connected disability that predated his employment with Wal-Mart. His knees are impaired and he cannot stand in the same position for long periods of time. He cannot perform the twisting that would be involved in moving items on the conveyor while working as a cashier. The employer told him a position working strictly as a cashier was the only work available. He was told he would have to use vacation time or go on a leave of absence until suitable work was found for him.

REASONING AND CONCLUSIONS OF LAW:

Mr. Wolfe did not request a leave of absence. He was told by the employer that using vacation time or going on a leave of absence were his only options for retaining a relationship with Wal-Mart. He wanted to remain in the position he previously held in sporting goods, but the

employer only offered work he could not physically perform. Inasmuch as Mr. Wolfe had no option but to take a leave of absence, the administrative law judge cannot conclude that he was voluntarily unemployed.

Mr. Wolfe retains the physical ability to perform work within the meaning of Iowa Code section 96.4(3). The fact that he worked for Wal-Mart for over two years in spite of his disability is indicative of his ability to engage in gainful employment. For the reasons cited herein, the administrative law judge concludes that Mr. Wolfe is available for work within the intent and meaning of the law. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated March 7, 2008, reference 01, is hereby reversed. Mr. Wolfe is able to and available for work within the meaning of the law. Benefits are allowed effective January 27, 2008, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw