

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID R ELLEDGE

Claimant

APPEAL NO. 11A-UI-12970-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 08/21/11

Claimant: Appellant (2)

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated September 23, 2011, reference 01, which denied unemployment insurance benefits finding the claimant was unduly limiting his availability for work or waiting for work with a specific employer. After due notice, a telephone hearing was held on October 25, 2011. Claimant participated personally. Participating on behalf of the claimant was Nicholas Pothitakis, Attorney at Law. Claimant's Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant has been unduly limiting his availability for work.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: David Elledge began employment with Wal-Mart Stores, Inc. on May 6, 1999. Mr. Elledge most recently held the position of full-time over-the-road tractor/trailer driver. Claimant's last day of work was December 4, 2010. On December 6, 2010, Mr. Elledge underwent shoulder surgery. Claimant has remained on the employment rolls of Wal-Mart Stores, Inc. and continues to be covered by company health insurance.

Subsequent to Mr. Elledge's shoulder surgery on December 6, 2010, the claimant has attempted to return to work at Wal-Mart Stores, Inc. and has been offered the possibility of being assigned to numerous different job positions within the company.

Based upon the ongoing representations of Wal-Mart Stores, Inc. that the company's attempting to find a position available for Mr. Elledge that meets his physical limitations, the claimant has primarily sought to resume performing services for Wal-Mart Stores, Inc. in the capacity of an over-the-road truck driver or any other available positions within the company.

The claimant has maintained consistent contact both personally and through his attorney with Wal-Mart Stores, Inc. and the employer has actually represented to the claimant and his attorney that a new job position will soon be available to Mr. Elledge.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes the claimant is unduly limiting his availability for work. It does not.

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 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".

In this case the claimant has primarily sought to resume performing services for Wal-Mart Stores, Inc. based upon ongoing representations by company management and their legal representatives that the employer is actively engaged in finding a job position for Mr. Elledge that meets his physical limitations.

The evidence in the record establishes that numerous potential job positions have been considered by both the employer and Mr. Elledge and that the employer continues at the time of hearing to actively be engaged in finding a job position for the claimant. Under these circumstances, the administrative law judge concludes that the claimant has not unreasonably restricted his availability for work. The claimant has followed a course of action that the claimant reasonably believes will lead to prompt re-employment with the company. Benefits are allowed, providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated September 23, 2011, reference 01, is reversed. Claimant is able and available for work. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs