

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARCY A MARTIN**

Claimant

**APPEAL NO. 14A-UI-09076-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**

Employer

**OC: 07/27/14**

**Claimant: Appellant (1)**

Section 96.4(3) – Able and Available for Work

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from a representative's decision dated August 27, 2014 (reference 01) which denied unemployment insurance benefits, effective July 27, 2014, finding that the claimant was not able to perform work due to injury. After due notice was provided, a telephone hearing was held on September 22, 2014. The claimant participated personally. Although duly notified, there was no participation by Wal-Mart Stores.

**ISSUE:**

At issue is whether the claimant is able and available for work within the meaning of the Iowa Employment Security Law.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Marcy Martin began employment with Wal-Mart Stores in April 2010 and continues to be maintained on the company employment rolls at the time of hearing. Ms. Martin is employed as a part-time customer service representative, normally working 32 hours per week, and is paid by the hour.

Marcy Martin's last day of work at Wal-Mart Stores was June 11, 2014. The claimant was then injured in a non-work-related automobile accident. As a result of the non-work-related accident, Marcy Martin had two compressed vertebrae and was determined not to be able to work by her physician.

On July 26, 2014 the claimant received a partial release to return to light-duty work, provided that she was not to lift in excess of five to seven pounds. Because the claimant's injury was due to a non-work-related illness or injury, the employer was not required to accommodate the claimant's light-duty limitations. Ms. Martin did not seek other prospective employers at that time.

Marcy Martin is fully released to return to work, effective September 24, 2014, and plans to return to her employment with Wal-Mart Stores at that time.

## REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant was able and available for work effective July 27, 2014. 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".

An otherwise eligible claimant is eligible to receive benefits with respect to any week, only if the evidence indicates the individual is able to work, is available for work, and is earnestly and actively seeking work. Iowa Code Section 96.4(3). 871 IAC 24.22. The claimant bears the burden of establishing that the claimant meets the above requirements. 871 IAC 24.22. Marci Martin is subject to the requirements set forth in Iowa Code Section 96.4(3) because she is neither partially unemployed or temporarily unemployed as defined by Iowa Code Section 96.19(38). The claimant's circumstances do not amount to partial unemployment in that she has been completely removed from the work schedule because her being removed from the work schedule is not a result of a plant shut down, vacation, inventory, lack of work, or emergency.

To satisfy the able requirement 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. 871 IAC 24.22(1). With regards to illness or injury, each case is decided on an individual basis because various work opportunities present different physical requirements. 871 IAC 24.22(1)(a). A statement from a medical practitioner is considered to be prima facie evidence of the physical ability of the individual to perform the work required. The doctor's statement is legally sufficient to establish the claimant's physical ability, unless disproved by other evidence. 871 IAC 24.22(1)(a). The evidence in this record establishes that Marcy Martin was determined to be unable to work due to her non-work-related automobile accident and that the employer was not required to assign the claimant light-duty work because her illness or injury was due to a non-work-related illness or injury.

To satisfy the availability requirement, an individual must be willing, able, and ready to accept suitable work which the individual does not have good cause to refuse. The individual must be generally attached to the labor market.

For the above stated reasons, the administrative law judge concludes that Marcy Martin is not able and available for work within the meaning of the Iowa Employment Security Law for the period of July 27, 2014 until September 24, 2014 when she was scheduled to be fully released to work without limitations.

**DECISION:**

The representative's decision dated August 27, 2014 (reference 01) is affirmed. The claimant was not able to perform work due to injury effective July 27, 2014. The claimant is not eligible to receive unemployment insurance benefits effective that date.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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