

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS A MACKLAND
Claimant

APPEAL NO: 12A-UI-04310-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 03/04/12
Claimant: Appellant (2/R)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Thomas Mackland (claimant) appealed a representative's April 11, 2012 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was unable to work with Wal-Mart Stores (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 8, 2012. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from May 2003, to March 4, 2012. The claimant had surgery for a non-work-related issue. While off work the claimant's private physician told the claimant he could return to work but he could not climb a ladder. The employer had no work for the claimant

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant is able to work.

871 IAC 24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

- (1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that illness he is considered to be unavailable for work. The claimant was released to return to work with restrictions by his physician. He is considered to be available for work because his physician stated he was able and available for work. The claimant is not disqualified from receiving unemployment insurance benefits.

The issue of the claimant's separation from employment is remanded for determination.

DECISION:

The representative's April 11, 2012 decision (reference 01) is reversed. The claimant is qualified to receive unemployment insurance benefits because he is able and available for work with the employer. The issue of the claimant's separation from employment is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css