

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TREVIANA S MARTIN

Claimant

APPEAL NO: 14A-UI-00765-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 12/15/13

Claimant: Appellant (2)

Section 96.4-3 – Able and Available
871 IAC 24.22j(1),(2),(3) – Leave of Absence

STATEMENT OF THE CASE:

The claimant appealed a department decision dated January 16, 2014, reference 01, that held she requested a leave of absence that is a voluntarily period of unemployment as of December 15, 2013, and benefits are denied. A telephone hearing was held on February 12, 2014. The claimant participated. The employer chose not to participate. Employer Exhibit 1 was received as evidence.

ISSUES:

Whether the claimant is able and available for work.

Whether claimant is on a leave of absence.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The claimant was hired on April 11, 2012 and last worked for the employer as a part-time processor at a Davenport, Iowa store on December 8, 2013. The claimant was injured in an auto accident on December 9 and she sought medical treatment. She informed the employer about the accident and she made daily calls to the store manager to report she could not come to work due to her injury.

The manager told claimant on December 13 she would need to talk to personnel about her absence because she had missed work more than three days. Personnel told claimant she would have to take a leave of absence due to the length of her absence.

Claimant saw her doctor on December 16. The doctor imposed work restrictions that restricted her from lifting more than 20 pounds and no bending or twisting. Claimant went to the store with these restrictions on December 18 and she was hoping there would be light duty work as she could not do her regular job without some accommodation.

The employer advised claimant it had no light duty job for her and she would need to remain off work until she received an unrestricted work release from her doctor that allowed her to return to her normal job.

The employer representative submitted a written statement it would not participate in this hearing.

REASONING AND CONCLUSIONS OF LAW:

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(2)j(1)(2)(3) provides:

Benefit 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.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

The administrative law judge concludes claimant did not request of leave of absence from the employer and no availability disqualification is imposed for this reason.

There was no agreement between the claimant and the employer as to a specific leave of absence for a certain period. While is understandable employer has a policy for an employee absent more than three days to be placed on leave, claimant is not disqualified for this reason. She wanted to return to work with accommodation to perform her processor job or light duty.

DECISION:

The department decision dated January 16, 2014, reference 01, is reversed. No leave of absence disqualification is imposed December 15, 2013. Benefits are allowed, provided claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs