

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BOBBY J THOMPSON

Claimant

WAL-MART STORES INC

Employer

APPEAL NO. 12A-UI-06300-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/22/12

Claimant: Appellant (1)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated May 12, 2012, reference 01, which held that the claimant was not eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 21, 2012. Claimant participated. The employer failed to respond to the hearing notice and did not participate. The record consists of the testimony of Bobby Thompson.

ISSUE:

Whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant is employed by the Wal-Mart store located in Sioux City, Iowa. The claimant has worked there for four years as a maintenance person. His last day of actual work was September 20, 2011. He was experiencing problems with his right hand and eventually underwent surgery for carpal tunnel syndrome. The claimant continued to have symptoms and had an MRI, which showed two “pinched nerves” in his neck. The claimant had neck surgery on January 13, 2012. He is still healing from that surgery and will not be released to full duty until the end of July 2012. The claimant’s neck condition is not work related.

The claimant had been receiving short-term disability benefits until those benefits ran out in April 2012. He is on a personal leave from Wal-Mart. He is not looking for work. He could return to work if Wal-Mart would accommodate his light-duty restrictions.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 24.22(1)a provides:

Benefits 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.

(1) Able to work. 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.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

871 IAC 24.23(35) provides:

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

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

The evidence in this case established that the claimant is not able and available for work at this time. The claimant is still under the care of a physician and has not been released to return to full duty. The claimant does have a light-duty release but that release does not permit him to return to work. The claimant is on a personal leave of absence from Wal-Mart and was, until April 2012, receiving short-term disability benefits. The claimant is not looking for work. The claimant believes that he could return to Wal-Mart but the employer will not allow him to do so until he has a full release. Because the claimant's medical is non-work-related, the employer is not obligated to provide an accommodation for a light-duty release.

Since the claimant is not able and available for work, he is not eligible for benefits. Benefits are denied.

DECISION:

The decision of the representative dated May 12, 2012, reference 01, is affirmed. The claimant is not able and available for work effective April 22, 2012.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css