

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELISSA L PEFFER
Claimant

APPEAL NO: 14A-UI-10227-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 08/24/14

Claimant: Appellant (2)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Melissa L. Pepper (claimant) appealed a representative's September 26, 2014 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 23, 2014. This appeal was consolidated for hearing with one related appeal, 14A-UI-10228-DT. The claimant participated in the hearing. A review of the Appeals Section's conference call system indicates that Wal-Mart Stores, Inc. (employer) failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant started working for the employer on or about June 9, 2012. She worked part time (32 hours per week) as a baker/wrapper in the employer's Council Bluffs, Iowa store. Her most recent day of work as of the date of the hearing was August 14, 2014.

The claimant is pregnant with a due date in late March 2015. On August 14, 2014 the claimant was given a lifting restriction of no more than 15 to 20 pounds. The claimant's normal job duties did not routinely involve such lifting; she might normally need to lift that much no more than about ten percent of the time. However, after the claimant turned in her work restriction to the employer, the employer determined that it would not allow her to continue to work under the restriction, even though the prior year the employer had accommodated a substantially similar restriction given to another employee.

REASONING AND CONCLUSIONS OF LAW:

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4-3. To be found able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); 871 IAC 24.22(1).

The claimant has demonstrated that she is able to work in some gainful employment; the claimant's current work restrictions do not substantially affect her ability to perform work. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's September 26, 2014 decision (reference 01) is affirmed. The claimant is able to work and available for work effective August 14, 2014. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css