

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SAMANTHA L MUSSELMAN
Claimant

WAL-MART STORES INC
Employer

APPEAL 17R-UI-02288-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/20/16
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions
Iowa Admin. Code r. 871-24.22(2)j – Benefit Eligibility Conditions – Leave of Absence
Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 21, 2016, (reference 01) unemployment insurance decision that denied benefits based upon claimant's availability for work. The parties were properly notified about the hearing. A telephone hearing was held on March 27, 2017. Claimant participated.

ISSUES:

Is the claimant able to work and available for work effective November 20, 2016?
Is the claimant on an approved leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant works for employer in the apparel and fitting area on a part-time basis. On November 13, 2016, claimant injured her back in a non-work related incident. Immediately after the injury, claimant could not work. Claimant sought and was granted medical leave so she would not accrue attendance points. On approximately November 17, 2016, claimant visited her doctor and was issued restrictions of no bending or twisting and no lifting above ten pounds. Claimant submitted the restrictions to employer. Employer could not accommodate the restrictions as claimant's position required her to be able to lift 25 pounds or more. Employer did not offer claimant light duty work because the injury was not work related. On approximately December 23 or 24, 2016, claimant was released to return to work with no restrictions. Claimant returned to work in the capacity she was previously employed.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work.

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".

Iowa Admin. Code r. 871-24.22(2)j(1), (2) 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

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.

Iowa Admin. Code r. 871-24.23(10) provides:

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

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

The claimant requested and was given a leave of absence because of a non-work related injury for the period from November 14, 2016 to December 24, 2016. This is considered a period of voluntary unemployment and claimant is not eligible for benefits for such period. This is true even though the only reason claimant remained on leave is because she offered to work with restrictions and employer denied her request.

Iowa Admin. Code r. 871-24.23(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 medical practitioner and has not been released as being able to work.

Inasmuch as the medical condition was not work-related and the treating physician had not released the claimant to return to work without restriction, she has not established her ability to work while still an employee of employer effective November 20 through the week ending December 24, 2016. While she may have been able to perform light work duties, the employer is not obligated to accommodate a non-work related medical condition, and since she was not released to perform her full work duties, she was not considered able to or available for work.

Since claimant returned to work on approximately December 24, 2016, in the same capacity in which she was previously employed, she is also considered not able to or available for work effective December 24, 2016.

Iowa Admin. Code r. 871-24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

In summary, claimant is not considered able or available for work effective November 20, 2016.

DECISION:

The December 21, 2016, (reference 01) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective November 20, 2016. Benefits are denied.

Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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Decision Dated and Mailed

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