

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

TABATHA A GRELK
104 S OAK #1
DONNELLSON IA 52625

WAL-MART STORES INC
c/o FRICK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-12893-HT
OC: 07/04/04 R: 04
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant, Tabatha Grelk, filed an appeal from a decision dated November 23, 2004, reference 03. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on December 28, 2004. The claimant participated on her own behalf. The employer, Wal-Mart, did not provide a telephone number where a representative could be contacted and did not participate.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Tabatha Grelk was employed by Wal-Mart beginning

December 10, 1997. She worked full time as an unloader on Fridays, Saturdays and Sundays from 5:30 a.m. until 6:00 p.m.

Ms. Grek sprained her left ankle on July 1, 2004, while at home. Her physician, Dr. Pamela Christy, indicated the claimant could not perform her regular job from July 1 through September 19, 2004. However, she did return to work on September 5, 2004, but left before the end of her shift due to having a sick child. She was then unavailable for the next week because her other child also became ill.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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".

The claimant was not released to return to work by her doctor until September 19, 2004, and during the last two weeks of this period she was also not able to work because she had to care for her sick children. These factors make her not able and available for work under the provisions of the above Code section and she is not eligible to receive unemployment benefits as a result.

DECISION:

The representative's decision of November 23, 2004, reference 03, is affirmed. Tabatha Grek is not able and available for work and is ineligible to receive unemployment benefits.

bgh/b