Appeal Number: 04O-UI-07861-H2T
OC: 07-13-03   R: 02
Claimant: Appellant (1)

AZRA MIFTARI
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DES MOINES IA 50310

WAL-MART STORES INC
C/O THE FRICK COMPANY
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_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 15, 2004, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on August 25, 2004. The claimant did participate through the interpretation of Zijo Suceska and was represented by Teresa Jones, Legal Assistant. The employer did participate through Gail Wilson, Bakery Manager, and was represented by Pixie Allen of Talx UC Express. Claimant's Exhibit A was received. Employer's Exhibit One was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a bakery and café worker full time beginning September 20, 2003

through March 6, 2004 when she was taken off work by her doctor due to complications of her pregnancy. The claimant applied for a leave of absence to begin on March 8, 2004. Her leave of absence was granted by the employer and the claimant has not worked for the employer since March 6, 2004. On April 19, 2004, she was given lifting restrictions by her physician of no lifting over ten pounds due to some surgical treatment for her pregnancy. The claimant last worked on March 6, 2004. The claimant did not work between March 6, 2004 and April 19, 2004 because her doctor would not let her work due to complications due to her pregnancy. As of the date of the hearing, August 25, 2004, the claimant still had not been released to return to work without restrictions. The claimant is scheduled to return to work on September 6, 2004.

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 effective March 8, 2004.

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(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.

Inasmuch as the pregnancy was not work-related and the treating physician has not released the claimant to return to work, the claimant has not established ability to work. Benefits are withheld until such time as the claimant obtains a full medical release to return to work.

DECISION:

The representative's decision dated April 15, 2004, reference 03, is affirmed. The claimant is not able to work and available for work effective March 8, 2004. Benefits are withheld until such time as the claimant obtains a full medical release to return to work.

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