

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GHABRYEL S MYERS
Claimant

WALMART INC
Employer

APPEAL 18A-UI-10615-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/23/18
Claimant: Respondent (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The employer filed an appeal from the October 24, 2018 (reference 03) unemployment insurance decision that allowed benefits based upon a determination that the claimant was now able to and available for work. The parties were properly notified of the hearing. A telephonic hearing was held on November 7, 2018. The claimant, Ghabryel S. Myers, did not register a telephone number at which to be reached and did not participate in the hearing. The employer, WalMart, Inc., participated through Angel Boring, Store Manager. Employer's Exhibits 1 through 20 were received and admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUE:

Is the claimant able to work and available for work effective September 23, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time, most recently as an overnight stocker, from June 5, 2018, until September 28, 2018, when the employer determined that he had resigned. Claimant was on a leave of absence for a non-work-related injury between August 27 and September 8, 2018. Claimant had lifting restrictions from his doctor that prevented him from doing his job, and these restrictions were scheduled to end on September 10, 2018. Claimant was scheduled to return to work on September 11, but he did not return as scheduled. Claimant did not appear for the hearing or submit any documentation regarding his current ability to or availability for work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant has not established he is able to and available for work. Benefits are withheld.

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".

Iowa Admin. Code r. 871-24.22(1) 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.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

In order to be eligible for benefits, an individual must be able to work and available for work. In this case, claimant has not established that he is physically able to work. The evidence in the record indicates that he failed to return, following a leave of absence. Claimant has not presented any evidence showing he is physically capable of returning to work. Accordingly, benefits are withheld until such time as the claimant obtains a medical release to return to some type of work that he is capable of performing.

DECISION:

The October 24, 2018 (reference 03) unemployment insurance decision is reversed. The claimant is not able to and available for work effective September 23, 2018. Benefits are withheld until such time as the claimant obtains a medical release to return to some type of work that he is capable of performing.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn