

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARMELLA A JOHNSON
Claimant

APPEAL NO. 12A-UI-10042-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 07/08/12
Claimant: Appellant (2)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant, Carmella Johnson, filed an appeal from a decision dated August 14, 2012, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on September 13, 2012. The claimant participated on her own behalf. The employer, Wal-Mart, did not provide a telephone number where a witness could be contacted and did not participate.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

Carmella Johnson was employed by Wal-Mart beginning January 10, 2011. She is currently still employed as a full-time bakery associate but on medical leave at the insistence of the employer. Ms. Johnson is pregnant with a due date of November 13, 2012. Her doctor had imposed routine restrictions of not lifting, pushing, or pulling more than 20 pounds.

Only one job duty in her current responsibilities would require lifting, pushing, or pulling more than 20 pounds, and that is lifting the frozen bread dough on days when freight arrives three times a week. There are other bakery workers, including the manager, who assist in unloading the freight and everything else weighs less than 20 pounds. Her other duties in the bakery entail putting trays in the ovens and pushing carts, both of which are less than 20 pounds.

REASONING AND CONCLUSIONS OF LAW:

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 had provided evidence and testimony that she is able to do all of her regular job duties as a bakery associates with the exception of lifting the boxes of frozen bread dough on freight days. There appears to be sufficient other workers available to take care of that one minor thing and nothing else would violate her restrictions.

The record establishes the claimant is able and available for work for her regular job duties.

DECISION:

The representative's decision of August 14, 2012, reference 01, is reversed. Carmella Johnson is able and available for work in her regular job. Benefits are allowed, provided she is otherwise eligible and qualified.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw