

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TONY W BARRERAS
Claimant

APPEAL NO. 12A-UI-10741-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 07/22/12
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 29, 2012 (reference 02) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on October 2, 2012. Claimant participated. Employer participated through Sam's Club manager Shawn Cote.

ISSUE:

Is the claimant able to work and available for work effective July 22, 2012?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed part-time as a meat department worker. He did not work between July 19, 2012 and September 10, 2012. He had a personal medical issue (bulging disc) and was placed on a 40-pound lifting restriction. He is currently on a 50-pound lifting restriction, which falls within his job description. The employer does not accommodate non-work-related medical conditions.

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 July 22, 2012.

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 medical condition was not work-related and the employer is not obligated to accommodate a non-work-related medical condition, since claimant was not released to perform his full work duties, until September 10, 2012, he was not considered able to or available for work effective July 22, 2012.

DECISION:

The representative's decision dated August 29, 2012 (reference 02) is affirmed. The claimant is not able to work and available for work from July 22, 2012 through September 8, 2012.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs