IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

CARL J ROMANS
Claimant

APPEAL NO: 10A-UI-15217-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

**OC: 09/26/10
Claimant: Appellant (2/R)**

Section 96.4-3 – Able to and Available for Work

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's November 2, 2010 determination (reference 02) that held him ineligible to receive benefits as of October 2, 2010, because he was ill and unable to work. The claimant participated in the hearing. The employer advised the Appeals Section prior to the hearing, that no one on the employer's behalf would participate at the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge concludes the claimant is able to and available for work.

ISSUE:

Is the claimant able to and available for work as of October 2, 2010?

FINDINGS OF FACT:

The claimant had been working as a full-time janitor for the employer. The claimant went on a medical leave of absence in April 2010. The employer expected the claimant to return to work on September 21, 2010. When the claimant's physician released him to work with restrictions on September 21, the claimant's physician also indicated he should no longer work as a janitor. When the claimant returned to work and could not work as a janitor, he wanted work as a door greeter. The employer did not have this job available. The employer offered the claimant another job.

After the employer offered the claimant a job in the meat department, the employer gave him 30 more days of personal leave so he could make a decision about the job. The claimant's additional personal leave of absence ended October 21, 2010.

After his physician released him to work on September 21, the claimant established a claim for benefits during the week of September 26, 2010. The claimant has filed weekly claims since September 26. He is looking for work as a door greeter or as a cashier at a convenience store. Even though he is looking for a full-time job, he will accept a part-time job.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits, he must be able and available for work. Iowa Code § 96.4.3. The law presumes a claimant is not available for work when he requests and is granted a leave of absence. 871 IAC 24.23(10).

Since the claimant's physician released him to work with restrictions as of September 21 and the claimant talked to the employer about returning to work, the fact the employer put him on a personal leave to think about a job offer does not make the claimant unavailable for work when the employer initiated the additional 30-day leave.

Even if a claimant is unable to work as a janitor, his former job, the law does not require a claimant to be able to do his former job. Instead, the law requires a claimant to be able to perform meaningful work in which he has experience doing or is capable of performing. Based on the claimant's testimony, he is looking for full-time work in which he is capable of performing. For unemployment insurance purposes the claimant is able to and available for work as of September 26, 2010.

Since the claimant no longer works for the employer, issues that relate to his employment separation and/or whether he refused an offer of suitable work after he had been released will be remanded to the Claims Section to determine.

DECISION:

The representative's November 2, 2010 determination (reference 02) is reversed. The claimant established that as of September 26, 2010, he is able to and available for work. If he meets all other eligibility requirements, he is eligible to receive benefits as of September 26, 2010. Some of the eligibility requirements to receive benefits have not yet been addressed. Therefore, the issues that relate to his employment separation and whether he refused the employer's offer of work after he had been released to work are **Remanded** to the Claims Section to determine.

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Debra L. Wise
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs