

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RONALD R RICE
Claimant

APPEAL 21A-UI-09807-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

WHIRLPOOL CORPORATION
Employer

OC: 01/31/21
Claimant: Appellant (4R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions
Iowa Admin. Code r. 871-24.23(26) – Available – Part-time Same Wages and Hours
Iowa Code § 96.1A(37) – Total, Partial, and Temporary Unemployment

STATEMENT OF THE CASE:

On March 29, 2021, Ronald R. Rice (claimant) filed an appeal from the March 23, 2021, reference 01, unemployment insurance decision that denied benefits effective January 31, 2021, based upon the determination he was on an approved leave of absence and was not able to and available for work. After due notice was issued, a telephone hearing was held on July 6, 2021. The claimant participated. The employer responded to the initial hearing notice for a hearing on June 22, 2021, and requested to postpone the hearing, which was granted. However, the employer did not respond to the new hearing notice or register a witness; therefore, it did not participate in the hearing. No exhibits were offered into the record.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Was the claimant able to work, available for work, and actively and earnestly seeking work effective January 31, 2021?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for the employer effective July 19, 2001, as a full-time Spot Welder. At the beginning of February 2021, the claimant was exposed to someone who had tested positive for COVID-19. The employer's medical staff determined the claimant could not return to work until February 23.

The claimant filed his claim for unemployment insurance benefits effective January 31. He returned to work full-time effective February 22, but continued filing claims for unemployment

insurance benefits through the week ending April 10. The claimant works 40 hours a week earning \$22.10 an hour, or \$884 in gross wages each week. He reported the following wages and received the following benefits during each week he worked after February 22:

Week Ending	Wages Reported	Benefits Received
02/27/21	\$180	\$436
03/06/21	\$520	\$0
03/13/21	\$170	\$446
03/20/21	\$610	\$0
03/27/21	\$170	\$446
04/03/21	\$730	\$0
04/10/21	\$0	\$493

Whether the claimant failed to report wages earned and is subject to a penalty for misrepresentation has not been investigated by the Integrity Bureau.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was temporarily unemployed from January 31 through February 21, 2021, and is considered able to and available for work during that time. Benefits are allowed. However, the claimant is not unemployed under Iowa law effective February 22, 2021, and benefits are denied.

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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". [Emphasis added.]

Iowa Code section 96.1A(37) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Iowa Admin. Code r. 871-24.22 provides, in relevant part:

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.

...

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

Iowa Admin. Code r. 871-24.23 provides, in relevant part:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

Under Iowa Employment Security Law, an individual must be unemployed to be eligible for unemployment insurance benefits. Iowa Code § 96.1A(37). Total and temporary unemployment occur when an individual does not work or earn wages in any given week. However, temporary employment occurs when the employer does not have work for the claimant and the unemployment lasts for fewer than four consecutive weeks. Partial unemployment occurs when a person works and earns wages less than their weekly benefit amount plus fifteen dollars.

From January 31 through February 21, the employer did not have any work available to the claimant due to a public health emergency. The temporary separation lasted less than four weeks and the claimant returned to full-time work. Therefore, the claimant was temporarily laid off and is considered able to and available for work during that time. Benefits are allowed for those three weeks.

The claimant returned to full-time work effective February 22, 2021, and was no longer unemployed. Therefore, benefits are denied.

Whether the claimant failed to report wages earned while filing for unemployment insurance benefits, as delineated in the findings of fact, and is subject to a penalty for misrepresentation, is remanded to the Integrity Bureau for investigation and adjudication.

DECISION:

The March 23, 2021, reference 01, unemployment insurance decision is modified in the appellant's favor. The claimant was temporarily unemployed from January 31 through February 21, 2021, and is considered able to work and available for work. Benefits are allowed. Effective February 22, 2021, the claimant returned to work is no longer unemployed under Iowa law. Benefits are denied.

REMAND:

Whether the claimant failed to report wages earned while filing for unemployment insurance benefits, as delineated in the findings of fact, and is subject to a penalty for misrepresentation, is remanded to the Integrity Bureau for investigation and adjudication.



Stephanie R. Callahan
Administrative Law Judge

July 15, 2021
Decision Dated and Mailed

src/mh