

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SAWNYA L CLARK

Claimant

APPEAL 19A-UI-09216-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WHIRLPOOL CORPORATION

Employer

OC: 11/03/19

Claimant: Appellant (2)

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

Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

On November 22, 2019, Sawnya L. Clark (claimant) filed an appeal from the November 20, 2019, reference 02, unemployment insurance decision that denied benefits effective November 3, 2019 based upon the determination she was not able to and available for work due to injury. After due notice was issued, a telephone conference hearing was held on December 17, 2019. The claimant participated personally and was represented by John Lawyer, Attorney. Whirlpool Corporation (employer) did not respond to the hearing notice and did not participate. No exhibits were admitted into the record.

ISSUE:

Is the claimant able to work, available for work, and actively and earnestly seeking work effective November 3, 2019?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant separated from the employer on or about November 5, 2019 after she was released to return to work with a permanent lifting restriction to her left arm which the employer determined it could not accommodate. The claimant is currently seeking full-time employment in customer service or as a medical assistant. She has experience in both areas and the jobs do not require her to violate her lifting restriction.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work, available for work, and actively and earnestly searching for work. Benefits are allowed effective November 3, 2019, provided the claimant is otherwise eligible.

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 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.

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.

...

(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.

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.

...

(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.

An individual claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. The claimant has been released to work by her physician. While she does have restrictions, she is not required to be able to perform her prior job to be eligible for unemployment insurance benefits but needs to show she can obtain full-time employment within her restrictions and abilities. The claimant has identified other jobs in which she can obtain full-time work within her restrictions. The claimant has met the burden of proof to show she is able to work, available for work, and actively and earnestly seeking work. Accordingly, benefits are allowed.

DECISION:

The November 20, 2019, reference 02, unemployment insurance decision is reversed. The claimant is able to work, available for work, and actively and earnestly seeking work effective November 3, 2019. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Stephanie R. Callahan
Administrative Law Judge

December 20, 2019
Decision Dated and Mailed

src/scn