

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

OPHELIA WOLOTOH
Claimant

APPEAL NO. 21A-UI-07214-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WHIRLPOOL CORPORATION
Employer

**OC: 01/24/21
Claimant: Appellant (2)**

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 23, 2021, reference 01, decision that denied benefits for the period beginning January 24, 2021, based on the deputy's conclusion that the claimant requested and was granted a leave of absence, was voluntarily unemployed and was not available for work. After due notice was issued, a hearing was held on May 19, 2021. Claimant participated. Amih Sallah represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 21A-UI-07213-JTT. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, DBIN and WAGE-A.

ISSUE:

Whether the claimant was able to work and available for work during the week of January 24-30, 2021.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant has at all relevant times been employed by Whirlpool Corporation as a full-time Plant Utility Assembler. The claimant works first shift hours, Monday through Friday. During the relevant period, the employer had a COVID-19 policy that required employees to report potential exposure to the COVID-19 virus. The employer would then determine whether the employee would be allowed to work. On January 25, 2021, the claimant notified the employer that a family member who had just visited the claimant's home had tested positive for COVID-19. The claimant was not experiencing any symptoms of COVID-19, was not otherwise ill, and was ready and willing to report for work. However, the employer told the claimant that she would have to remain off work through Friday, January 29, 2021. The claimant complied with the employer directive and returned to work on Saturday, January 30, 2021 for scheduled overtime work. The claimant worked 7.5 hours on January 30, 2021 for which she was paid \$142.72.

The claimant established an new original claim and an new claim year that was effective January 24, 2021. Iowa Workforce Development set the weekly benefit amount at \$496.00. Whirlpool is the sole base period employer. The claimant made a weekly claim for the week that ended January 30, 2021 and then discontinued her claim. The claimant reported \$143.00 in wages for the week that ended January 24, 2021 and received \$477.00 in partial benefits.

The employer advises that it did not wish to protest the claimant's eligibility for benefits for this week when the employer required the claimant to be off work. The employer advises it has communicated with its third-party representative, Equifax, that it does not wish to protest such matters.

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".

Iowa Admin. Code r. 871-24.22(2) 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.

(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(10) provides:

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

(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.

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.

If a claimant individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. Iowa Code section 96.7(2)(a)(2)(a).

The evidence in the record establishes that the claimant was temporarily laid off, partially unemployed, able to work and available for work during the week that ended January 30, 2021. The claimant was ready, willing and able to report for work throughout the week, but the employer required the claimant to remained of work for the five of the six work days that week. The claimant is eligible for benefits for the week that ended January 30, 2021, provided she meets all other eligibility requirements. The employer's account may be charged.

DECISION:

The March 23, 2021, reference 01, decision is reversed. The claimant was able, available for work, but temporarily unemployed and partially unemployed during the week that ended January 30, 2021. The claimant is eligible for benefits for the week that ended January 30, 2021, provided she meets all other eligibility requirements. The employer's account may be charged.



James E. Timberland
Administrative Law Judge

May 27, 2021
Decision Dated and Mailed

jet/ol