

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALLANA SCHWENN
Claimant

WHIRLPOOL CORPORATION
Employer

APPEAL 21A-UI-00566-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/22/19
Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23 (10) – Voluntary Leave of Absence

STATEMENT OF THE CASE:

On November 25, 2020, claimant appealed the representative's November 17, 2020, decision (reference 01), that denied benefits because it determined she was not available to work as of August 23, 2020 due to requesting and being granted a leave of absence. A telephone hearing was held on February 9, 2021. The claimant participated personally. The employer did not participate. This appeal was heard at the same time as 21A-UI-00567-SN-T.

ISSUES:

Whether the claimant is available for work? Whether the claimant was on an approved leave of absence?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that:

On May 18, 1992, the claimant started working for the employer as a full-time team leader. The claimant's hourly wage is \$25.50 per hour. The claimant works from 7:00 a.m. to 3:30 p.m. Monday through Friday with occasional overtime assigned on Saturdays.

The employer has a Covid19 spread reduction practice which requires an employee to quarantine for 14 days if they are experiencing symptoms of Covid19 or have been in close proximity of someone who has tested positive.

On August 26, 2020, the claimant began having diarrhea and experienced a persistent headache after her shift that day. She reported these concerns to the employer through its Human Resources hotline. She was instructed to remain away from the employer's worksite until September 3, 2020.

On August 29, 2020, the claimant stopped experiencing symptoms. She would not have been able to work while she was experiencing these symptoms. The claimant is not sure if she was scheduled overtime for this Saturday.

On September 3, 2020, the claimant returned to work as instructed. The employer would have scheduled her work if she had not fallen within its Covid19 infection spread policy. The claimant did not receive any pay during this period she was on leave.

On September 8, 2020, the claimant became aware she had been in close contact with a coworker, James Vranek, who tested positive for Covid19. The claimant reported this information to the employer's Human Resources hotline. She was instructed to remain away from the employer's worksite until September 15, 2020. This 14-day quarantine period was measured from the day she was exposed, September 3, 2020. The claimant did not experience symptoms during this period. The claimant did not receive any pay during this period she was on leave.

On September 15, 2020, the claimant returned to work for her regularly scheduled hours.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was able and available effective August 23, 2020.

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(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.

Iowa Admin. Code r. 871-24.23(29) provides:

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

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

Iowa Admin. Code r. 871-24.23 (1) and (10) provide:

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.

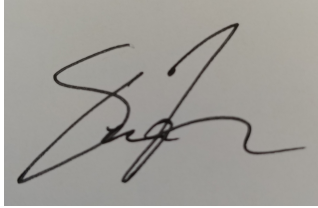
The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979).

The first time the claimant was held out of work occurred from August 27, 2020 to September 2, 2020. The claimant did not request a leave of absence for this period. The claimant experienced symptoms of an illness on August 27, August 28, and August 29, 2020. However, the claimant worked the majority of this week. Therefore, she is eligible for this period.

The second time the claimant was held out of work occurred from September 8, 2020 to September 15, 2020. The claimant did not request a leave for this period either. As a result, the claimant was able and available for the weeks ending September 12, 2020 and September 19, 2020.

DECISION:

The November 17, 2020, (reference 01) decision is reversed. The claimant was able and available effective August 23, 2020. Benefits are granted, provided she is otherwise eligible.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is written over a light gray rectangular background.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

February 22, 2021
Decision Dated and Mailed

smn/kmj