

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

FITAYAL YEMPANE
Claimant

WHIRLPOOL CORPORATION
Employer

APPEAL 20A-UI-13862-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (1)

Iowa Code § 96.4-3 – Able and Available
871 IAC 24.23(10) – Voluntary Leave of Absence

STATEMENT OF THE CASE:

On October 29, 2020, claimant appealed a representative's October 21, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits as of May 25, 2020. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on December 31, 2020. The claimant participated personally. The employer did not participate. Judicial notice was taken of the administrative record.

ISSUES:

The issues are whether the claimant is available for work and 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 October 18, 2017, the claimant started working for the employer as a full-time inspector. The claimant's wage is \$19.05 per hour. The claimant's immediate supervisor is Tracy Hardy.

On May 24, 2020, claimant called the employer's human resources department about getting a leave of absence because she had inadequate childcare for the next two weeks. The daycare provider claimant uses for childcare was closed those weeks due to the Covid19 pandemic. The human resources generalist claimant spoke to approved her to return on June 9, 2020. The claimant returned to work as scheduled on June 9, 2020. The claimant has been working for the employer since returning from leave. The employer had work available for the claimant during the weeks she was on leave.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was on a voluntary leave of absence from May 24, 2020 to June 9, 2020. As a result, the claimant was not able and available for work during that time.

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(8) provides:

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

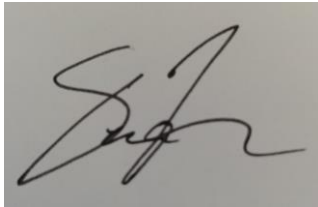
(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.

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). When employees are unable to perform work due to a medical condition or lack of childcare, they are considered to be unavailable for work.

When employees request and are granted a leave of absence, they are also considered to be voluntarily unemployed. She is disqualified for not being able and available due to the leave of absence from May 24, 2020 through June 9, 2020.

DECISION:

The representative's October 21, 2020, decision (reference 01) is affirmed. The claimant is considered to be unavailable for work and is not eligible to receive unemployment insurance benefits from May 24, 2020 to June 9, 2020. Benefits are denied.



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

January 20, 2021
Decision Dated and Mailed

smn/mh

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.