

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALLANA SCHWENN
Claimant

WHIRLPOOL CORPORATION
Employer

APPEAL 21A-UI-00567-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 02), that denied benefits because it determined she was not available to work as of July 26, 2020 due to requesting and being granted a leave of absence. A telephone hearing was held on February 9, 2021. The claimant participated personally. This appeal was heard at the same time as 21A-UI-00566-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 October 10, 2017, the claimant started working for the employer as a full-time kitchen clerk. The claimant's hourly wage is \$14.80 per hour.

The employer has a Covid19 spread reduction practice which requires an employee to quarantine for 14 days if they have someone who tested positive for Covid19 living in the same household.

On November 2, 2020, the claimant's daughter tested positive for Covid19. The claimant reported this information to the Human Resources Department. The Human Resources Department instructed the claimant to remain away from the employer's worksite from November 3, 2020 to November 16, 2020. The claimant began experiencing symptoms on November 7, 2020. The claimant did not use paid time off during this time off.

The claimant returned as scheduled on November 16, 2020. She continued to experience the headache and dizziness, but it was not persistent enough to disrupt her work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was able and available as of November 1, 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 (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.

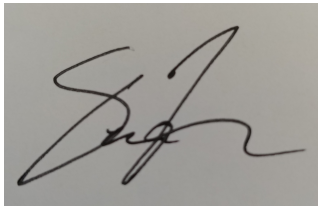
(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

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 claimant was away from work from November 3, 2020 to November 16, 2020. The claimant did not request a leave of absence for this period. The employer instructed her to remain away from the premises. Although the claimant did not experience symptoms of an illness, the illness did not prevent her from working. The claimant is able and available for this period. Benefits are granted.

DECISION:

The November 17, 2020 (reference 02) unemployment insurance decision denying benefits is reversed. Benefits are granted.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is shown on a light gray 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