

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANNIE NTUMBA
Claimant

APPEAL 20A-UI-14525-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WHIRLPOOL CORPORATION
Employer

**OC: 09/01/19
Claimant: Appellant (4)**

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

STATEMENT OF THE CASE:

On November 10, 2020, claimant appealed the representative's November 2, 2020, decision (reference 03), that denied benefits because it determined she was not available to work as of April 5, 2020 due to requesting and being granted a leave of absence. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on January 12, 2021. The claimant participated personally. The employer did not participate.

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 July 16, 2018, the claimant started working for the employer as a full-time brazier. The claimant's hourly wage is \$19.00 per hour.

The employer has a Covid19 spread reduction practice that requires employees to report illness symptoms immediately to its human resources department.

On July 19, 2020, the claimant was experiencing headaches, muscle pain and diarrhea. The claimant went home early on that day.

On June 20, 2020, the claimant was still experiencing the symptoms, so she reported her symptoms to the employer's human resources department per its Covid19 spread reduction practice. The human resources department employee told the claimant she was not supposed to return until August 3, 2020.

On August 1, 2020, the symptoms diminished to the point the claimant could have performed her duties at the employer. The claimant's next shift was not until August 3, 2020.

On August 3, 2020, the claimant returned to work. The claimant returned to work at her regular hours at that time. If the claimant had not been sick, the employer would have scheduled her shifts for the time she was on this leave of absence.

On August 10, 2020, the employer's facility did not have electricity because of a large storm that had been moving through Iowa at the time. All of employer's employees were sent home until power could be restored on August 17, 2020. The claimant would have been able to perform her duties from August 10, 2020 to August 17, 2020 if she had been scheduled to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge finds the claimant was not able and available for the week ending July 25, 2020. The administrative law judge concludes the claimant was able and available for the week ending August 15, 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.

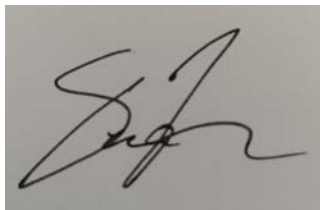
The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979).

The claimant was ill from June 20, 2020 to August 1, 2020. The claimant is correct that the employer initiated this leave of absence, but the outcome for this period is the same because she was ill. As a result, the claimant is not entitled to benefits for the week ending July 25, 2020.

The claimant was able to work from August 10, 2020 to August 17, 2020. The employer did not provide work for this period. The claimant would have been able to work this week if the employer had provided her work. As a result, the claimant is entitled to benefits for the week ending August 15, 2020.

DECISION:

The representative's November 2, 2020, decision (reference 03) is modified in favor of the appellant. The claimant is not entitled to benefits for the week ending July 25, 2020. The claimant is entitled to benefits for the week ending August 15, 2020.



Sean M. Nelson
Administrative Law Judge
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January 29, 2021
Decision Dated and Mailed

smn/scn