

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RICHARD KUZEKEMENA
Claimant

APPEAL 20A-UI-15985-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WHIRLPOOL CORPORATION
Employer

OC: 12/15/19
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(10) – Able & Available – Availability Disqualifications

STATEMENT OF THE CASE:

On November 13, 2020, the claimant filed an appeal from the November 4, 2020, (reference 01) unemployment insurance decision that denied benefits effective August 9, 2020. The parties were properly notified about the hearing. A telephone hearing was held on January 29, 2021. Claimant participated. Employer did not register for the hearing and did not participate.

ISSUES:

Is the claimant able to and available for work?
Is the claimant on a voluntary leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on June 21, 2017. Claimant works for employer as a full-time assembler.

In March 2020, the United States declared a public health emergency because of the COVID 19 pandemic.

On August 3, 2020, claimant had a headache and fever. Claimant called employer and notified employer of his symptoms. Claimant was at a funeral a few days earlier, but was not aware if he had come into contact with anyone who was positive for COVID 19. Claimant offered to take some medicine and come to work, but employer told him he could not do so. Employer informed claimant he could not come to work for the rest of the week. Claimant asked if he could file a claim for unemployment insurance benefits and employer said he could.

On August 7, 2020, claimant's cousin called and told claimant he had tested positive for COVID 19. Claimant still had mild symptoms, but would have been able to work if employer had allowed him to do so. Claimant contacted employer to give an update on his status. Claimant had not been restricted from work by a physician or medical provider. However, employer told claimant that he must stay home for another week.

Claimant returned to work the next week.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective August 2, 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. 871-24.23(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.

Here, claimant did not request a leave of absence. Employer would not allow claimant to come to work because he had a headache and fever. No doctor had restricted claimant from working. Claimant was willing to take medicine and work, but employer would not allow him to work because it was taking precautions due to the COVID 19 pandemic.

DECISION:

The November 4, 2020, (reference 01) unemployment insurance decision is reversed. The claimant is able to and available for work effective August 2, 2020, and regular, state-funded unemployment insurance benefits are allowed, provided claimant is otherwise eligible. Employer should be relieved of benefit charges as claimant was unemployed directly because of the COVID 19 pandemic.



Christine A. Louis
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February 16, 2021
Decision Dated and Mailed

cal/mh