

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**DENISE J OTTE**  
Claimant

**APPEAL NO. 21A-UI-07890-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WHIRLPOOL CORPORATION**  
Employer

**OC: 03/29/20**  
**Claimant: Appellant (4)**

Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the March 16, 2021, reference 01, decision that denied benefits effective January 10, 2021, based on the deputy's conclusion that the claimant requested and was granted a leave of absence, was voluntarily unemployed and was not available for work. After due notice was issued, a hearing was held on May 27, 2021. Claimant participated. The employer did not provide a telephone number for the hearing and did not participate. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO and WAGE-A.

**ISSUES:**

Whether the claimant was able to work and available for work for the period beginning January 10, 2021.

Whether the claimant was partially and/or temporarily unemployed for the period beginning January 10, 2021.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant has at all relevant times been employed by Whirlpool Corporation as a full-time assembler. The claimant's wage is \$21.29 an hour. On Monday, January 11, 2021, the claimant complied with the employer's COVID-19 policy by notifying the employer that her daughter, with whom the claimant carools, was showing signs of illness consistent with COVID-19. The claimant was not ill. Pursuant to the employer's COVID-19 policy, the employer directed the claimant to leave the workplace, despite the claimant's request to stay and work. The employer required the claimant to remain off work through Tuesday, January 19, 2021. The claimant returned to the full-time employment on Wednesday, January 20, 2021. The claimant worked 24 hours during the week that ended January 23, 2020 for which she was paid \$510.96. The claimant continued to work full-time through the week that ended February 27, 2021.

The claimant established an original claim for benefits that effective March 29, 2020 and an additional claim for benefits that was effective January 10, 2021. The period at issue in this

matter is the period of January 10, 2021 through February 27, 2021. The claimant made weekly claims for each of the weeks in question. The claimant reported zero wages and received \$481.00 in regular benefits for the week that ended January 16, 2021. For the weeks between January 27, 2021 and February 27, 2021, the claimant reported wages that exceeded her weekly benefit amount by more than \$15.00.

## **REASONING AND CONCLUSIONS OF LAW:**

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(2) 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(10) and (23) 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.

...

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

Iowa Code section 96.1A(37) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

If a claimant individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. Iowa Code section 96.7(2)(a)(2)(a).

The evidence in the record establishes that the claimant was able to work, available for work, but temporarily laid off during the week that ended January 16, 2021. The claimant was not ill, had not requested a leave of absence, and was off work pursuant to the employer's directive. The claimant is eligible for benefits for the week that ended January 16, 2021, provided she meets all other eligibility requirements. The employer's account may be charged for benefits for that week.

During the week that ended January 23, 2021, the claimant was able to work, available for work, but not partially unemployed. Though the employer only had reduced hours for the claimant that week, the claimant's wages exceeded her weekly benefit amount by more than \$15.00. The claimant is not eligible for benefits for the week that ended January 23, 2021.

During the weeks between January 24, 2021 and February 27, 2021, the claimant was able to work, but did not meet the unemployment insurance "availability" requirement because was working full-time and thereby was removed from the labor market. The claimant is not eligible for benefits for the weeks between January 24, 2021 and February 27, 2021.

**DECISION:**

The March 16, 2021, reference 01, decision is modified in favor of the claimant as follows. The claimant was able to work, available for work, but temporarily laid off during the week that ended January 16, 2021. The claimant is eligible for benefits for the week that ended January 16, 2021, provided she meets all other eligibility requirements. The employer's account may be charged for benefits for that week.

During the week that that ended January 23, 2021, the claimant was able to work, available for work, but not partially unemployed. The claimant is not eligible for benefits for the week that ended January 23, 2021.

During the weeks between January 24, 2021 and February 27, 2021, the claimant was able to work, but did not meet the unemployment insurance "availability" requirement because was working full-time and thereby was removed from the labor market. The claimant is not eligible for benefits for the weeks between January 24, 2021 and February 27, 2021.



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James E. Timberland  
Administrative Law Judge

August 31, 2021  
Decision Dated and Mailed

jet/mh