

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**MIMIE A MUSEKE**  
Claimant

**WHIRLPOOL CORPORATION**  
Employer

**APPEAL NO. 21A-UI-09376-B2-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/09/20**  
**Claimant: Appellant (4)**

Iowa Code § 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated March 26, 2021 reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on June 18, 2021. Claimant participated personally and had witnesses Stephen Mack and Dolivo Luse. Claimant's exhibit A was admitted into evidence.

**ISSUES:**

Whether claimant is able and available for work?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant works as a full time employee for employer. In late January 2021 claimant missed a week of work on a Covid-related leave. She did not file for unemployment benefits for that week. After that period, all work missed by claimant up until the week ending April 17, 2021 was missed because the plant where claimant worked shut down. She remained able and available to work throughout this time.

Claimant did miss work the week ending April 17, 2021 because she went to visit her sister. Claimant was not available to work while she was away.

**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(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.

Claimant remained able and available to work for all weeks after February 6, 2021, with the exception of the week ending April 15, 2021. Benefits are allowed for those weeks.

**DECISION:**

The decision of the representative dated March 26, 2021, reference 01 is modified in favor of claimant. Claimant is eligible to receive unemployment insurance benefits, effective February 6, 2021, provided claimant meets all other eligibility requirements. The only week when claimant is not available for work was the week ending April 17, 2021. Claimant is not eligible for benefits for that week.



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Blair A. Bennett  
Administrative Law Judge

July 01, 2021  
Decision Dated and Mailed

bab/ol