

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319**

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**JOHN J WELSH**

Claimant

and

**WHIRLPOOL CORPORATION**

Employer

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**HEARING NUMBER: 21B-UI-04447**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**NOTICE**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION:** 96.4-3, 96.19-38B

**DECISION**

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

**FINDINGS OF FACT:**

Claimant began working for employer as a full-time technician on November 6, 1992. On Monday, November 30th, the Claimant called into Employer's Covid line and reported a headache and dry cough. The Employer told the Claimant not to come to work and advised Claimant to get a Covid test or wait until he was symptom free. The Claimant got a test, and the results came back negative on Wednesday, December 2, 2020. The Employer, however, applied its policy and kept the Claimant off work through December 11. The Claimant has allergies.

The Claimant was able to work, and no longer on an agreed leave of absence, as of December 2, 2020.

**REASONING AND CONCLUSIONS OF LAW:**

As explained by the Administrative Law Judge a Claimant can be found unavailable to work because of requesting a leave of absence. 871-24.23(10). But the leave must be agreed to, and not the result of unilateral action. *See* 871 IAC 24.22(2)(j) ("negotiated with the consent of both parties..."). The Claimant is therefore not unavailable for being on a leave of absence.

Furthermore, while being too sick to work will render you *unable* to work, the Claimant here was no longer feeling sick by Wednesday, December 2, 2020. We do think that having a pending COVID test will render one *unavailable* to work, but here that test was no longer pending as of Wednesday, December 2, 2020. So the Claimant was available the major portion of the workweek as required both for the week ending December 5, and the week ending December 12. 871 IAC 24.22(2)(h) (“Generally, if the individual is available for the major portion of the workweek, the individual is considered to be available for work.”).

Moreover, since this was not an agreed leave of absence it was in fact a temporary layoff as a reaction to the Pandemic emergency. Someone is temporarily unemployed if “for a period, ....not to exceed four consecutive weeks, the individual is unemployed due to a...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.” Iowa Code §96.1A(37)(c). Such individuals need not be available to work. Iowa Code §96.4(3). The Claimant was thus not even required to be available to work. But, as we have found, he was available anyway.

Benefits are allowed for the two weeks ending December 5, 2020 and December 12, 2020. Reported wages will offset benefits according to the usual calculations. The Employer may note that it may be eligible for relief of charges for a period of allowed benefits related to the Pandemic, although this is an issue for the tax division of IWD, not us.

## **DECISION:**

The administrative law judge’s decision dated April 19, 2021 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was able and available for work for the benefit weeks ending December 5, 2020 and December 12, 2020. Accordingly, benefits are allowed for these two weeks.

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James M. Strohman

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Ashley R. Koopmans

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Myron R. Linn