

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JAMI D HUGHES**

Claimant

**WHIRLPOOL CORPORATION**

Employer

**APPEAL 15A-UI-05720-EC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/12/15**

**Claimant: Appellant (1)**

Iowa Code §96.5(1) – Voluntary Quit

Iowa Code §96.4(3) – Able and Available to Work

Iowa Admin. Code r. 871-24.22(2)j – Benefit Eligibility Conditions – Leave of Absence

Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence

**STATEMENT OF THE CASE:**

The claimant/appellant, Jami Hughes, filed an appeal from the May 6, 2015, (reference 01) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on June 23, 2015. The claimant participated. The employer participated through Jennifer Wagner, HR Generalist. The employer submitted exhibits which were marked as Exhibit E and were admitted into the record without objection.

**ISSUES:**

Was the separation a voluntary quit with or without good cause attributable to the employer?

Is the claimant able and available to work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an assembler and braiser from July 16, 2013, until this employment ended on April 14, 2015, when she failed to report back to work after she was released to work by her treating medical professional.

The claimant last worked a full shift for this employer on February 12, 2015. She had been on FMLA (Family and Medical Leave Act) leave as of January 23, 2015, for medication management purposes. Her FMLA leave was not due to a work-related illness. Her treating medical professional released her to return to work on April 6, 2015. She did not return to work on that date.

The claimant's leave of absence was governed by the union contract. She was required to report for work within two work days after her medical professional released her to work. She failed to do so. On April 14, 2015, the employer sent a written notice to the claimant, telling her

that her employment was terminated because of her failure to report for work in accordance with the union contract. The claimant did not call in or report to work after receiving this notice.

The claimant wanted additional FMLA leave, from April 6 until April 20, 2015. This request was apparently not properly communicated to the employer with supporting medical documentation. The claimant asserted that her medical professional's office faxed several documents to her employer. The employer's representative asserted that these supporting documents were not received.

According to the claimant, she was not able to return to work until April 20, 2015. She stated that she could have returned to work on that date, after her medications were changed and stabilized. However, she did not contact the employer after she received her termination notice to notify the employer that she was able and available for work.

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

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work.

Iowa Code § 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)j(1)(2)(3) provides:

Benefit 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.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

Iowa Admin. Code r. 871-24.22(2)(1)(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.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

The claimant requested and was given a leave of absence for medication management purposes, for the time period from January 23, 2015 to April 6, 2015. Her employer granted that request. She was on an approved leave of absence until April 6, 2015. She did not return to work on the date her medical professional had released her to return.

She requested an additional leave of absence from April 6 to April 20, 2015. She was not able and available to work. She did not report to work after her medical professional released her to return to work. Accordingly, under the plain language of the governing statute and regulation, benefits are denied.

#### **DECISION:**

The May 6, 2015, (reference 01) decision is affirmed. The claimant did not return to work at the end of her approved leave of absence and is considered as having voluntarily quit her employment. Benefits are denied.

The claimant was not able to work and available for work effective April 6, 2015. She did not contact her employer after she became able and available for work on April 20, 2015. Benefits are withheld until such time as the claimant makes herself available for work to the extent she was available during the base period history.

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Emily Gould Chafa  
Administrative Law Judge

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Decision Dated and Mailed

ec/pjs