

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MELISSA D SCHOLTUS
Claimant

WHIRLPOOL CORPORATION
Employer

APPEAL 21R-UI-11691-JC-T
**AMENDED ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/22/19
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence

STATEMENT OF THE CASE:

The claimant/appellant, Melissa D. Scholtus, filed an appeal from the December 21, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits and stated she was ineligible for benefits effective October 18, 2020, due to a requested leave of absence.

Notice of the hearing was mailed to the claimant’s last known address of record for a telephone hearing to be held at 10:00 a.m. on March 3, 2021. A review of the Appeals Bureau’s conference call system after 10:15 a.m. the same day shows the claimant/appellant failed to respond to the hearing notice instruction and provide a telephone number at which she could be reached for the scheduled hearing, and no hearing was held. Claimant appealed the decision to the Employment Appeal Board, who remanded the matter for a new hearing.

After proper notice, a telephone hearing was conducted on July 14, 2021. Claimant participated personally. The employer did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing.

The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant able to work and available for work effective October 18, 2020?
Was the claimant voluntarily unemployed due to a requested leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has worked for employer since 1996 and is still employed as a first class inspector/auditor.

Claimant carpools with her co-workers. On October 11, 2021, a co-worker in the carpool tested positive for COVID-19. Employer sent claimant home effective October 12, 2020 and directed

her to stay home for two weeks. Claimant was not advised to be off work due to illness or to self-quarantine by a medical professional. Claimant had no symptoms. Claimant returned to work October 26, 2020. Employer did not pay claimant while off of work. Claimant would have worked if the employer would have allowed.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is eligible for benefits:

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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 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.

Iowa Admin. Code r. 24.22(2) provides:

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.

(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.

(emphasis added).

For an unemployed individual to be eligible to receive benefits, she must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that she is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22.

Claimant in this case was able to and available for work during the two week period of October 12-25, 2020. Employer, not claimant, initiated a leave of absence for claimant, based upon employer policy. It was not based upon claimant's illness or a medical professional directing claimant to be off work. Claimant was not voluntarily unemployed. Claimant is eligible for benefits, provided she meets all other requirements.

DECISION:

The December 21, 2020 (reference 01) initial decision is **REVERSED**. Claimant is able to and available for work effective October 18, 2020. Benefits are allowed, provided she is otherwise eligible.



Jennifer L. Beckman
Administrative Law Judge
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July 23, 2021
Decision Dated and Mailed

jlb/mh