

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROGER THOMAS
Claimant

WHIRLPOOL CORPORATION
Employer

APPEAL 20A-UI-15437-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 3, 2020, (reference 01) unemployment insurance decision that denied benefits based upon her not being able to and available for work for the week ending August 23, 2020. After due notice was issued, a telephone conference hearing was scheduled to be held on January 26, 2021. The claimant participated. The employer did not participate. The administrative law judge took official notice of the administrative records. Exhibit A was admitted into the record.

ISSUE:

Was the claimant able to work, available for work, and actively and earnestly seeking work the week ending August 23, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant, Roger Thomas, began working for the employer, Whirlpool Corporation, as a full time auto foam operator on February 28, 1980. He received 40 hours per week. His hourly rate of pay is \$23.50.

The employer as a Covid19 spread reduction policy which states if an employee believes they have been exposed to someone who has been infected by Covid19, then the employee is to away from the employer's worksite until they are approved to return.

On August 28, 2020, the claimant reported through the employer's human resources hotline that he had been in the presence of someone who tested positive for Covid19 that previous weekend. The employee who answered the claimant's call instructed him to remain away from the employer's worksite until September 10, 2020. The claimant did not ever experience symptoms of an illness. The claimant would have worked his regularly scheduled hours if he had been allowed to return to work.

On September 10, 2020, the claimant returned to work and has been working his regularly scheduled hours since then.

The claimant provided a Cedar Rapids Gazette article stating the employer's plant had shut down from August 10, 2020 to August 15, 2020. (Exhibit A) This period of time pre-dates the effective denial period of the underlying unemployment decision. Furthermore, the claimant stated he received unemployment benefits for this period. As a result, this period of time will not be analyzed below.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective August 23, 2020.

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.

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

(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.

Iowa Admin. Code r. 871-24.23 provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

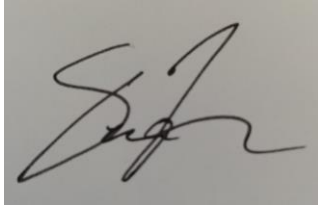
(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

An individual claiming benefits has the burden of proof that he is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

The employer did not assign hours to the claimant from August 28, 2020 to September 10, 2020 because he had been in the presence of someone who tested positive for Covid19. The claimant was not ill during this period. The claimant did not request a leave of absence. The claimant was willing to work for this period and would have worked if the employer had allowed him to return prior to September 10, 2020. Accordingly, he is eligible for unemployment insurance benefits.

DECISION:

The November 3, 2020, (reference 01) unemployment insurance decision is reversed. The claimant is able to work and available for work effective August 23, 2020. Benefits are granted.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is shown within a rectangular frame.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

February 10, 2021
Decision Dated and Mailed

smn/mh