

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANITA M GARIN
Claimant

WHIRLPOOL CORPORATION
Employer

APPEAL 21A-UI-03511-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/24/19
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

On January 21, 2021, Anita M. Garin (claimant) filed an appeal from the January 11, 2021, (reference 01) unemployment insurance decision that denied benefits based upon the determination she was not able to and available for work. After due notice was issued, a telephone hearing was held on March 25, 2021. The claimant participated personally. Whirlpool Corporation (employer) did not respond to the hearing notice and did not participate. No exhibits were offered into the record.

ISSUE:

Was the claimant able to and available for work?

FINDINGS OF FACT:

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

Claimant began working for employer on September 12, 1988. Claimant continues to work for employer full-time as a training specialist. Employer held claimant out of work during the weeks ending November 7 and November 14, 2020 due to claimant's exposure to someone who tested positive for COVID-19 the first week and due to claimant testing positive for COVID-19 the second week. Claimant was able and available for work during the periods she was held out. Claimant received full wages for the week ending November 14, 2020. Claimant returned to work on November 16, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

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". [Emphasis added.]

Iowa Code section 96.19(38)c provides:

Definitions.

38. Total and partial unemployment

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or 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 Admin. Code r. 871-24.23 provides, in relevant part:

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 to prove that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. Employer held claimant out of work during the week ending November 7, 2020 due to claimant's exposure to someone who tested positive for COVID-19. Claimant received no wages during that week. Claimant was able to and available for work during this week she was held out. Claimant was held out the week ending November 16, 2020, but employer paid her full wages during that period so was not unemployed that week. Benefits are allowed during the week ending November 7, 2020, when claimant was held out of work and was able to and available for work.

DECISION:

The January 11, 2021, (reference 01) unemployment insurance decision is reversed. The claimant is able to work and available for work and is eligible for benefits as set forth above.



Stephanie Adkisson
Administrative Law Judge
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March 26, 2021
Decision Dated and Mailed

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