

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**A'RAIN T WILSON**  
Claimant

**WHIRLPOOL CORPORATION**  
Employer

**APPEAL 18A-UI-02082-JP-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/07/18**  
**Claimant: Appellant (1R)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the February 12, 2018, (reference 02) unemployment insurance decision that denied benefits as of January 7, 2018. The parties were properly notified about the hearing. A telephone hearing was held on March 13, 2018. Claimant participated. Carl Mangrum participated on claimant's behalf. Employer participated through human resources generalist John West. Official notice was taken of the administrative record with no objection.

**ISSUES:**

Is the claimant able to work and available for work effective January 7, 2018?

Is the claimant on an approved leave of absence?

**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 from October 6, 2017, and separated from employment around March 5, 2018. When claimant was hired, she notified the employer that she was six months pregnant and she expected to have her baby in approximately three months.

Around January 4, 2018 claimant requested a leave of absence from the employer due to her pregnancy. Claimant did not qualify for Family and Medical Leave Act (FMLA) leave because she had not worked for the employer long enough. Claimant made her request through the employer's third party vendor and it was initially denied; however, on January 18, 2018, claimant's requested for a leave of absence was approved. Claimant was granted a leave of absence for the period from January 8, 2018 to March 2, 2018. Claimant was scheduled to return to work on March 5, 2018. Claimant was not required to maintain contact with the employer while she was on her leave of absence.

On January 9, 2018, claimant had her baby. Claimant's doctor wanted her to remain off work for six weeks. On February 14, 2018, claimant's doctor released her to return to work with no

restrictions. Claimant did not inform the employer that she had been released to return to work. Around February 19, 2018, claimant attempted to contact the employer to inform it that she was not going to return to the employer. Mr. West was not aware of claimant calling the employer and notifying it she was quitting.

Claimant did not return the employer on March 5, 2018. Around March 5, 2018, claimant spoke to an employee in human resources and informed the employee that she would not be returning to the employer. Claimant testified she did not return to the employer because she does not have a babysitter to watch her child. The employer was not aware claimant had been released to return to work by her doctor on February 14, 2018. The employer had work available for claimant had she returned to work at the end of her leave of absence.

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

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work. Benefits are denied.

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(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.

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

An individual claiming benefits has the burden of proof that they are be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. Claimant requested and was given a leave of absence due to her pregnancy for the period from January 8, 2018 to March 2, 2018. Because claimant requested and was granted a leave of absence, she is not eligible for unemployment insurance benefits. Iowa Admin. Code r. 871-24.23(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."). Claimant was scheduled to return to work from her leave of absence on March 5, 2018; however, claimant did not return to work on March 5, 2018 because she does not have childcare for her child. Because claimant failed to return to work from her leave of absence on March 5, 2018, she is not eligible for unemployment insurance benefits. Iowa Admin. Code r. 871-24.22(2)(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.”). Furthermore, claimant testified she is not able to return to work until she obtains childcare and therefore has not made herself available for work. Accordingly, benefits are denied.

**DECISION:**

The February 12, 2018, (reference 02) decision is affirmed. Claimant is not able to work and available for work effective January 7, 2018. Benefits are withheld until such time as claimant makes herself available for work.

**REMAND:** The separation issue delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision.

---

Jeremy Peterson  
Administrative Law Judge

---

Decision Dated and Mailed

jp/rvs