

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RABBI GHONDA
Claimant

APPEAL 20A-UI-15464-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WHIRLPOOL CORPORATION
Employer

**OC: 12/15/19
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 17, 2020, (reference 02) unemployment insurance decision that denied benefits based upon him not being able to and available for work for the week ending July 19, 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.

ISSUE:

Was the claimant able to work, available for work, and actively and earnestly seeking work the week ending July 19, 2020?

FINDINGS OF FACT:

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

The claimant, Rabbi Ghonda, began working for the employer, Whirlpool Corporation, as a full time operator on October 21, 2018. He was scheduled 40 hours per week during the second shift which runs from 3:30 p.m. to midnight. His hourly rate of pay is \$18.00.

The employer as a Covid19 spread reduction policy which states if an employee believes they have Covid19 symptoms, then the employee is to report their symptoms to management and remain away from the employer's worksite, until they are approved to return.

On July 22, 2020, the claimant reported through the employer's human resources hotline that he had diarrhea and minor cold symptoms. The employee who answered the claimant's call instructed him to remain away from the employer's worksite until July 29, 2020. The claimant's symptoms subsided on July 24, 2020. The claimant did not make weekly claims for this week.

On July 29, 2020, the claimant returned to work. He worked his regularly scheduled hours until August 10, 2020.

On August 10, 2020, the claimant went to work. On that date, the employer's worksite was damaged by a severe storm. The employer told all of its employees to go home until August 17, 2020. The employer did not assign work to the claimant for this week. If work had been available, the claimant was able and willing to work those shifts.

On August 17, 2020, the claimant returned to his regularly scheduled shifts.

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 July 19, 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.

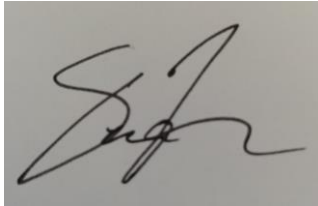
The claimant has the burden of proof that he is able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

The employer did not assign hours to the claimant July 22, 2020 to July 29, 2020. The claimant was ill until July 24, 2020, but he would have been able to return on that date. The claimant did not make a weekly claim for this week. As a result, the claimant cannot receive benefits for this period.

From August 10, 2020 to August 17, 2020, the employer's plant was closed and it did not assign work to the claimant. The claimant was willing and able to work for this period. After returning on August 17, 2020, the claimant has worked his regularly scheduled hours. Accordingly, he is eligible for unemployment insurance benefits.

DECISION:

The November 17, 2020, (reference 02) unemployment insurance decision is reversed. The claimant is able to work and available for work effective July 19, 2020. Benefits are granted.

A rectangular box containing a handwritten signature in black ink. The signature is stylized and appears to read 'S. Nelson'.

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

February 11, 2021
Decision Dated and Mailed

smn/mh