

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MAMIE H YINI
Claimant

APPEAL NO. 20A-UI-09137-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WHIRLPOOL CORPORATION
Employer

OC: 11/24/19
Claimant: Appellant (4/R)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.19(38) – Temporary and Partial Unemployment

STATEMENT OF THE CASE:

The claimant, Mamie Yini, filed a timely appeal from the July 22, 2020, reference 01, decision, that denied benefits effective May 17, 2020, based on the deputy's conclusion that the claimant requested and was granted a leave of absence, was voluntarily unemployed, and not available for work. After due notice was issued, a hearing was held on September 17, 2020. Ms. Yini participated and presented additional testimony through Stephen Yini. The employer did not provide a telephone number for the hearing and did not participate in the hearing. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

ISSUES:

Whether the claimant was able to work and available for work for the period beginning May 17, 2020.

Whether the claimant was on a leave of absence that she requested and the employer approved for the period beginning May 17, 2020.

Whether the claimant was partially and/or temporarily unemployed for the period beginning May 17, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: the claimant is employed at Whirlpool Corporation as a full-time utility worker. The claimant is assigned to the second shift. The claimant's usual work hours are 3:30 p.m. to midnight, Monday through Friday. The claimant's hourly wage is \$19.30.

Effective Thursday, May 21, 2020, the employer temporarily shut down its production plant. The claimant was available for work throughout that week, but only received part-time hours that week. The employer reopened on Tuesday, May 26, following the Memorial Day holiday. However, the claimant did not return to work at that time. The employer had invited employees to take an additional two weeks off without pay. The employer did not compel employees to take additional time off. The claimant took advantage of the opportunity to have time off to

spend time with her children. The claimant voluntarily did not perform any work for the employer during the week that ended May 30, 2020. The claimant voluntarily remained off work for the majority of the week of May 31, 2020 through June 6, 2020, but returned to work toward the end of that week.

The claimant established an additional claim for benefits that was effective May 17, 2020. Iowa Workforce Development had previously set the claimant's weekly benefit amount for regular benefits at \$506.00. Whirlpool is the sole base period employer. After the claimant established her additional claim for benefits, she made weekly claims for the benefit weeks that ended May 23, May 30, and June 6, 2020. The claimant's earned wages for the weeks that ended May 23 and June 6 were less than her weekly unemployment insurance benefit amount. The claimant earned no wages for the week that ended May 30, 2020.

The claimant discontinued her claim for unemployment insurance benefits after the benefit week that ended June 6, 2020.

REASONING AND CONCLUSIONS OF LAW:

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:

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.

(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. 871-24.23(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.

...

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

...

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

Iowa Code section 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

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.

During the week that ended May 23, 2020, the claimant was able to work, available for work, but partially unemployed. The claimant was available for full-time work that week, but the employer only had part-time work for her due to the shutdown that went into effect on the Thursday of that week. The claimant's weekly wages were less than her weekly regular unemployment insurance benefit amount. The claimant is eligible for benefits for the week that ended May 23, 2020, provided she meets all other eligibility requirements.

During the week that ended May 30, 2020, the claimant was voluntarily off work pursuant to a leave of absence, did not meet the availability requirement, and was not eligible for

unemployment insurance benefits. The employer's invitation to take time off without pay was not a temporary layoff and did not make the claimant eligible for unemployment insurance benefits. The circumstances were much the same during the week that ended June 6, 2020, when the claimant was voluntarily absent for the majority of the week pursuant to that same leave of absence. The claimant is not eligible for benefits for the week that ended June 6, 2020.

This matter will be remanded to the Benefits Bureau for initial determination of whether the claimant may be considered for benefits for the week that ended August 15, 2020 in connection with the August 23, 2020 reopening of the claim.

DECISION:

The July 22, 2020, reference 01, decision is modified in favor of the claimant as follows. During the week that ended May 23, 2020, the claimant was able to work and available for work, but partially unemployed. The claimant is eligible for benefits for the week that ended May 23, 2020, provided she meets all other eligibility requirements. During the weeks that ended May 30 and June 6, 2020, the claimant did not meet the availability requirement. The claimant is not eligible for benefits for the weeks that ended May 30 and June 6, 2020.

This matter is remanded to the Benefits Bureau for initial determination of whether the claimant may be considered for benefits for the week that ended August 15, 2020 in connection with the August 23, 2020 reopening of the claim.



James E. Timberland
Administrative Law Judge

October 26, 2020
Decision Dated and Mailed

jet/sam

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you have received.**