

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOHN G VAN HAUEN

Claimant

WHIRLPOOL CORPORATION

Employer

APPEAL NO. 21A-UI-12431-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/03/21

Claimant: Appellant (4)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code section 96.1A(37) – Temporary & Partial Unemployment

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 26, 2021, reference 02, decision that denied benefits effective March 14, 2021, based on the deputy's conclusion that the claimant was not partially unemployed during that period. After due notice was issued, a hearing was held on July 28, 2021. Claimant participated. The employer did not provide a telephone number for the appeal hearing and did not participate. 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 during the four weeks between March 14, 2021 and April 10, 2021.

Whether the claimant was partially and/or temporarily unemployed during the four weeks between March 14, 2021 and April 10, 2021.

Whether the employer's account may be charged for benefits for the period between March 14, 2021 and April 10, 2021.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established an original claim for benefits that was effective January 3, 2021. Iowa Workforce Development set the weekly benefit amount for regular benefits at \$546.00. The claimant has at all relevant times been attached to full-time employment as an Assembler at Whirlpool Corporation. Whirlpool is the sole base period employer.

The claimant made weekly claims for the weeks that ended January 9, 16 and 23, 2021 and then discontinued his claim.

The claimant established an additional claim that was effective March 14, 2021. The claimant then made weekly claims for the weeks that ended March 20, March 27, April 3, and April 10, 2021.

For the week that ended March 20, 2021, the claimant reported that he was not working, that he was able to work and available for work, but that he earned no wages. During this week, the employer temporarily laid off the claimant, due to a lack of work to operate all three lines. The claimant remained physically and mentally able to work, and available for full-time.

For the week that ended March 27, 2021, the claimant reported that he was working and that he earned \$812.00 in wages. The claimant was back at work full-time during this week. During this week, the employer temporarily laid off the claimant, due to a lack of work to operate all three lines. The claimant remained physically and mentally able to work, and available for full-time.

For the week that ended April 3, 2021, the claimant reported that he was working, that he earned \$649.00 in wages and \$162.00 in holiday pay. The claimant was back at work full-time during this week.

For the week ending April 10, 2021, the claimant reported that he was not working, that he was able to work and available for work, but that he earned no wages. During this week, the employer temporarily laid off the claimant, due to a lack of work to operate all three lines. The claimant remained physically and mentally able to work, and available for full-time.

The claimant did not make weekly claims for the period beyond April 10, 2021 because the claimant commenced a leave of absence in connection with carpal tunnel surgery scheduled for April 12, 2021.

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(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

Iowa Code section 96.1A(37) 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.

If a claimant to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. Iowa Code section 96.7(2)(a)(2)(a).

The evidence establishes the claimant was able to work, available for work, but temporarily unemployed during the weeks that ended March 20 and April 10, 2021. The claimant is eligible for benefits for those two weeks, provided he meets all other eligibility requirements. The employer's account may be charged for benefits for those two weeks.

The evidence establishes the claimant was employed full-time during the weeks that ended March 27 and April 3, 2021. The claimant was not unemployed during those weeks and, therefore did not meet the unemployment insurance "availability" requirement. In addition, the claimant cannot be deemed temporarily or partially unemployed during those weeks. The claimant is not eligible for benefits for the weeks that ended March 27 and April 3, 2021.

Because the claimant did not make weekly claims for the period beginning April 11, 2021, this decision need not further address that period.

DECISION:

The April 26, 2021, reference 02, decision is modified in favor of the claimant/appellant as follows. During the weeks that ended March 20, 2021 and April 10, 2021, the claimant was able to work, available for work, but temporarily unemployed. The claimant is eligible for benefits for the weeks that ended March 20, 2021 and April 10, 2021, provided he meets all other eligibility requirements. The employer's account may be charged for benefits for the weeks that ended March 20, 2021 and April 10, 2021. During the weeks that ended March 27, 2021 and April 3, 2021, the claimant was neither temporarily or partially unemployed and did not meet the availability requirement. The claimant is not eligible for benefits for the weeks that ended March 27 and April 3, 2021.



James E. Timberland
Administrative Law Judge

November 3, 2021
Decision Dated and Mailed

jet/scn