

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

**CINDY S MOSS**  
Claimant

**APPEAL NO. 19A-UI-03485-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WHIRLPOOL CORPORATION**  
Employer

**OC: 03/31/19**  
**Claimant: Appellant (4R)**

Section 96.4-3 – Able and Available  
871 IAC 24.23(10) – Voluntary Leave of Absence

**STATEMENT OF THE CASE:**

Cindy Moss (claimant) appealed a representative's April 22, 2019, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits as of March 31, 2019, because she was unable to work for Whirlpool Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 15, 2019. The claimant participated personally. The employer provided a telephone number but could not be reached at the time of the hearing. The administrative law judge called the number and a recorded message stated that no one was available and the caller should try again later. The line did not allow for messages to be left. Therefore, the employer did not participate.

**ISSUE:**

The issue is whether the claimant was on a voluntary leave of absence and whether she is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant performed services for the employer from January 2, 2017, to April 4, 2018. On January 18, 2018, the claimant suffered a medical issue with her thumb. Her doctor diagnosed the condition as arthritis. The employer returned her to light duty work in January, February, and March 2018. After three months, the employer had no more light duty work to offer the claimant.

The claimant completed Family Medical Leave (FMLA) paperwork. Her doctor said she had game keeper's thumb, carpal tunnel, and arthritis. She was granted paid short-term disability from April 4, 2018, to September 30, 2018. In the fall of 2018, her claim for worker's compensation was denied and she did not appeal the decision. When her FMLA expired, she

took unpaid leave through April 29, 2019. On January 2, 2019, her doctor said she could return to work with restrictions. Her physician would not allow her to return to work as an assembler for the employer. The employer did not have restricted work for her but considered her an employee to April 29, 2019. The claimant did not have any other doctor's releases after January 2, 2019.

The claimant filed for unemployment insurance benefits with an effective date of March 31, 2019. She was separated from employment on April 29, 2019. The employer said the claimant was unable to return to work after her medical leave.

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

The administrative law judge concludes the claimant is eligible to receive unemployment insurance benefits.

Iowa Admin. Code r. 871-24.23(10) provides:

(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.

Iowa Admin. Code r. 871-24.23(1) 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.

When an employee requests and is granted a leave of absence, she is considered to be voluntarily unemployed. The claimant requested a medical leave of absence by completing FMLA paperwork. The employer granted her request. The request was initiated by the claimant. After the FMLA expired, the claimant took unpaid leave through April 29, 2019. From March 31, 2019, the effective date of her claim, to April 27, 2019, she is considered to be voluntarily unemployed. During that period she was on a medical leave of absence.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). When an employee has a medical condition and is unable to perform work due to that condition, she is considered to be unavailable for work. The claimant was released to return to work with restrictions by her physician as of January 2, 2019. As of April 28, 2019, she is considered to be available for work with other employers because her physician stated she was able and available for work with restrictions. The claimant is eligible to receive unemployment insurance benefits as of April 28, 2019, so long as she is otherwise qualified.

The issue of the claimant's separation from employment is remanded for determination.

**DECISION:**

The representative's April 22, 2019, decision (reference 01) is modified in favor of the appellant. The claimant is disqualified from receiving unemployment insurance benefits from March 31, 2019 to April 27, 2019, because she was on a medical leave of absence. The claimant is considered to be able and available for work as of April 28, 2019, so long as she is otherwise qualified.

The issue of the claimant's separation from employment is remanded for determination.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs