

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALMEIDA M DIAKABANA

Claimant

APPEAL 21R-UI-20867-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WHIRLPOOL CORPORATION

Employer

OC: 02/14/21

Claimant: Appellant (1)

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:

Claimant filed an appeal from the April 19, 2021 (reference 01) unemployment insurance decision that denied benefits effective February 14, 2021. The parties were properly notified of the hearing. A telephone hearing was scheduled for July 14, 2021. No hearing was held because appellant failed to respond to the hearing notice and provide a telephone number at which appellant could be reached for the scheduled hearing. On July 26, 2021, a default decision was issued dismissing the appeal.

On July 31, 2021, claimant appealed to the Employment Appeal Board (EAB). On September 21, 2021, the EAB remanded this matter to the Appeals Bureau for a hearing on the merits. Upon remand, due notice was issued and a hearing was held on November 10, 2021. Claimant participated. French interpretation was provided by Lawrence (ID 11640) of CTS Language Link. Employer participated through Colin Evers, Human Resources Operations Specialist. No exhibits were admitted.

ISSUES:

Whether claimant is able to and available for work.

Whether claimant is on an approved leave of absence.

FINDINGS OF FACT:

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

Claimant is employed as a full-time Inspector with Whirlpool Corporation. Claimant became ill with Covid-19 symptoms on February 8, 2021. Claimant tested positive for Covid-19 on February 10, 2021. Claimant was absent due to illness from February 10, 2021 through February 22, 2021. Claimant returned to work on February 23, 2021 and worked his regular hours thereafter. Employer had work available for claimant from February 10, 2021 through February 22, 2021. Claimant filed an initial claim for unemployment benefits effective February 14, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not able to work and available for work from February 14, 2021 through February 22, 2021.

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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), (2) provide in pertinent part:

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.

(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(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.

An individual claiming benefits has the burden of proof that he is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

Claimant was ill from February 14, 2021 through February 22, 2021. Claimant was not able to and available for work. Accordingly, he is not eligible for unemployment insurance benefits. Benefits are denied effective February 14, 2021.

DECISION:

The April 19, 2021 (reference 01) unemployment insurance decision is affirmed. Claimant was not able to and available for work. Benefits are denied effective February 14, 2021.



Adrienne C. Williamson
Administrative Law Judge
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December 14, 2021

Decision Dated and Mailed

acw/abd