

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KATHRYN G JACKSON

Claimant

APPEAL 21A-UI-02434-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WHIRLPOOL CORPORATION

Employer

OC: 03/22/20

Claimant: Appellant (2)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence

STATEMENT OF THE CASE:

The claimant/appellant, Kathryn G. Jackson, filed an appeal from the December 22, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits and stated she was ineligible for benefits due to a requested leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on March 4, 2021. The claimant participated personally and Randy Karewson testified. The employer, Whirlpool Corporation, did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing.

The administrative law judge took official notice of the administrative records. Claimant Exhibits 1-22 were admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant able to work and available for work effective September 20, 2020?

Is the claimant voluntarily unemployed due to a requested leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has worked for employer since 2013.

Per employer policy, claimant is asked a series of COVID-19 related questions before each shift. Claimant answered questions for her shift and was flagged by the employer because of an answer. Claimant had a sinus infection but not COVID-19 and tested negative for COVID-19. Claimant was not advised to be off work due to illness or to self-quarantine by a medical professional. Per employer policy, claimant was placed on a leave of absence on September 21, 2020 and told she could not return to work until October 1, 2020. Claimant would have worked if the employer would have allowed.

REASONING AND CONCLUSIONS OF LAW:

The first issue before the administrative law judge is whether the employer's agreement not to contest a claim for unemployment insurance benefits insures that the claimant will receive unemployment benefits. It does not. The decision about whether a claimant receives or is denied unemployment insurance benefits is not up to the employer or the claimant, but is determined by Iowa Workforce Development applying the facts of the claimant's job separation to the Unemployment Security Law as enacted by the state legislature. Whereupon the employer might agree not to contest a claim, that promise, in and of itself, does not guarantee that a claimant will receive unemployment insurance benefits, but only that the employer will not hinder any efforts on the part of the claimant to make a claim for unemployment benefits.

For the reasons that follow, the administrative law judge concludes the claimant is eligible for benefits:

Iowa Code § 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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

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.

Iowa Admin. Code r. 24.22(2) provides:

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.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

(emphasis added).

For an unemployed individual to be eligible to receive benefits, she must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that she is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22.

Claimant in this case was able to and available for work. Employer, not claimant, initiated a leave of absence for claimant, based upon employer policy. It was not based upon claimant's illness or a medical professional directing claimant to be off work. Claimant was not voluntarily unemployed. Claimant is eligible for benefits, provided she meets all other requirements.

DECISION:

The December 22, 2020 (reference 01) initial decision is **REVERSED**. Claimant is able to and available for work effective September 20, 2020. Benefits are allowed, provided she is otherwise eligible.



Jennifer L. Beckman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

March 9, 2021
Decision Dated and Mailed

jlb/lj