

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DOUG L SCHUMACHER
Claimant

APPEAL NO. 21A-UI-12428-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WHIRLPOOL CORPORATION
Employer

OC: 03/29/20
Claimant: Appellant (2R)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 30, 2021, reference 02, decision that denied benefits effective March 214, 2021, based on the deputy's conclusion that the claimant . 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 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 and DBIN.

ISSUES:

Whether the claimant was able to work and available for work beginning March 14, 2021.
Whether the claimant was partially and/or temporarily unemployed beginning March 14, 2021.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established an additional claim for benefits that was effective March 14, 2021. The claimant's weekly benefit amount for the claim year that began March 29, 2020 is \$481.00. The claimant made a weekly claim for the week that ended March 20, 2021 and then discontinued his claim in connection with his return to work.

The claimant has been with the employer for four decades and works as a full-time spot welder. The claimant's usual work hours are 7:00 a.m. to 3:30 p.m., Monday through Friday. The claimant also performs overtimes work on Saturdays as needed. The claimant's wage since September 2020 has been \$22.10 an hour.

When the claimant reported for work on Monday, March 15, 2021, the employer told the claimant that since the second shift spot welders had been without work the previous week, the employer was sending the claimant and the other first shift spot welders home for the week so that the employer could provide work to the second shift spot welders. The claimant did not request to go off work. The claimant was ready, willing and able to report for his full-time work

hours. The employer next had work for the claimant on Monday, March 22, 2021. The claimant returned to the full-time employment at that time.

The benefit year that started on March 29, 2020 expired on March 27, 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 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 an individual to whom 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 claimant was able to work, available for work, and temporarily laid off during the week that ended March 20, 2021. The employer had no work for the claimant that week and sent him home. The claimant did not request a leave of absence and was not on a leave of absence. The claimant is eligible for benefits for the week that ended March 20, 2020, provided he meets all other eligibility requirements.

The administrative law judge concludes he does not have jurisdiction to enter a decision regarding the able and available issues in the new year that started April 4, 2021. The Benefits Bureau has not yet rendered a decision regarding the able and available issues in the new claim year. The question of whether the claimant was able to work, available for work, and temporarily unemployed during the new claim year will be remanded to the Benefits Bureau for an initial decision.

DECISION:

The April 30, 2021, reference 02, decision is reversed. The claimant was able to work, available for work, and temporarily laid off during the week that ended March 20, 2021. The claimant did not request a leave of absence and was not on a leave of absence. The claimant is eligible for benefits for the week that ended March 20, 2020, provided he meets all other eligibility requirements.

The question of whether the claimant was able to work, available for work, and temporarily unemployed during the new claim year **remanded** to the Benefits Bureau for an initial decision.

The administrative law judge notes the April 12, 2021 Equifax SIDES response to the April 6, 2021 notice of claim does not address the claimant's status during the relevant period beginning April 4, 2021. An earlier Equifax response in March 2021 was also nonresponsive regarding the relevant period beginning March 14, 2021. It would be helpful if the employer representative would heed the information in the notice of claim form that sets forth the relevant period to be considered. Based on prior statements by this employer regarding a breakdown in communication with Equifax, it is doubtful the Equifax protests regarding this claimant's eligibility for benefits conform to the employer's intent.



James E. Timberland
Administrative Law Judge

August 4, 2021
Decision Dated and Mailed

jet/mh