

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MELINDA M PYLE**  
Claimant

**APPEAL NO. 11A-UI-13254-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**690 PAYROLL INC**  
Employer

**OC: 08/28/11**  
**Claimant: Respondent (2/R)**

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

**STATEMENT OF THE CASE:**

690 Payroll (employer) appealed a representative's September 29, 2011 decision (reference 05) that concluded Melinda Pyle (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 31, 2011. The claimant participated personally. The employer participated by Richard Vest, Director.

**ISSUE:**

The issue is whether the claimant is 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 was hired in 1989 as a part-time on-call stage hand. The claimant worked when work was available. She was laid off her full-time job and filed for unemployment insurance benefits with an effective date of August 28, 2011. She continued to work for this employer through September 4, 2011.

On September 7, 2011, the claimant went to Montana to care for her mother who had knee surgery. As of October 15, 2011, the claimant could have returned to Iowa because her mother was healthy enough to leave. The claimant remains in Montana. The employer has work available for the claimant.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant is not able and available for work.

871 IAC 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.

When an employee requests and is granted a leave of absence she is considered to be unavailable for work. The claimant took time away from work to care for his mother. She is considered to be unavailable for work from September 7, 2011, on. The claimant is disqualified from receiving unemployment insurance benefits for that period due to her unavailability for work.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received benefits since filing the claim herein. Pursuant to this decision, those benefits may now constitute an overpayment. The issue of the overpayment is remanded for determination.

**DECISION:**

The representative's September 29, 2011 decision (reference 05) is reversed. The claimant is disqualified from receiving unemployment insurance benefits for that period due to her unavailability for work. The issue of the overpayment is remanded for determination.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/css