

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DEBRA K WILLIAMS**

Claimant

**APPEAL NO. 09A-UI-09901-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DOCTOR JOHN'S INC/DOCTOR JOHN'S  
LINGERIE & NOVELTY BOUTIQUE**

Employer

**OC: 5/10/09**

**Claimant: Respondent (2-R)**

Section 96.4-3 – Able and Available

Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Doctor John's (employer) appealed a representative's July 6, 2009 decision (reference 01) that concluded Debra Williams (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 held on July 28, 2009. The claimant did not provide a telephone number where she could be reached and, therefore, did not participate. The employer was represented by John Coil, President, and participated by Melissa DeVries, Manager.

**ISSUE:**

The issue is whether the claimant is disqualified for being unavailable 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 2007, as a part-time cashier and sales associate. She was a part-time worker because she refused to work weekends. The claimant became a full-time employee on June 28, 2009.

**REASONING AND CONCLUSIONS OF LAW:**

871 IAC 24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

The claimant was hired as a part-time worker and was still working part-time for the employer through June 28, 2009. She could have been assigned full-time hours but refused. She asked that those part-time hours be changed so that she would not have to work weekends. The hour reduction was initiated by the claimant. She was still employed in a part-time position as was agreed to at the time she was hired. On June 28, 2009, she became a full-time worker. The claimant is disqualified from receiving unemployment insurance benefits because she was not available 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 July 6, 2009 decision (reference 01) is reversed. The claimant is disqualified from receiving unemployment insurance benefits because she was not available 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