

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JODY A GORMAN**  
Claimant

**APPEAL NO. 08A-UI-06542-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HILLCREST FAMILY SERVICES**  
Employer

**OC: 06/08/08 R: 04**  
**Claimant: Respondent (2/R)**

Section 96.4-3 – Able and Available for Work  
Section 96.3-7 – Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer filed an appeal from a decision of a representative dated July 8, 2008, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 30, 2008. The claimant participated. The employer participated by Julie Heiderscheit, Vice President Human Resources. Employer's Exhibits One and Two were received into evidence.

**ISSUES:**

The issues in this matter are whether the claimant was able and available for work and whether the claimant has been overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant last worked for this employer on May 20, 2008. Ms. Gorman is employed as a teacher associate for Hillcrest Family Services. The employer provides educational services to the Dubuque Community District school system and school district where satellite programs operate under 28E Agreements. Under Iowa Code section 28E.4, the school district has entered into an agreement with Hillcrest for joint or cooperative actions and share educational authority. The last day of work before the most recent school term ended was June 4, 2008. Prior to that date the claimant was sent correspondence advising Ms. Gorman that she had reasonable assurance of employment in her same capacity or similar capacity for the following school term which was to begin on August 18, 2008. Ms. Gorman signed a contract to return to work effective August 18, 2008 on June 9, 2008.

Approximately one and one-half weeks before the end of the most recent school term, Ms. Gorman was injured in a work-related incident engaging in mandatory bowling with Hillcrest Family Services as part of her employment. Ms. Gorman informed her supervisor, the principal, that she had re-injured her back and was unable to work by chiropractic order. The parties agreed that the claimant would begin a medical leave of absence. Under the agreement the

employer agreed to allow the claimant to return to her same or similar position with the organization upon being released by her medical practitioner. Ms. Gorman opened a claim for unemployment insurance benefits effective June 8, 2008 and was allowed benefits as being on a temporary layoff.

Ms. Gorman was released by her chiropractor effective July 22, 2008 and the release was communicated to Hillcrest Family Services.

#### **REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence in the record establishes that the claimant was able and available for work from June 8, 2008 until July 22, 2008. It does not. The evidence in the record establishes that Ms. Gorman was injured in a work-related incident approximately one and one-half weeks before her employment would come to an end due to the conclusion of the school term. The evidence is undisputed that Hillcrest Family Services and the claimant entered into a medical leave of absence agreement which was to conclude when the claimant presented evidence to the employer that she had been fully released to return to work by her medical practitioner. The claimant provided this release to the employer effective July 22, 2008.

The administrative law judge concludes based upon the evidence in the record that the claimant was not able and available for work as she was on an approved leave of absence during this period. The administrative law judge thus concludes that the claimant was not eligible to receive unemployment insurance benefits for the period of June 8, 2008 through July 22, 2008 and benefits paid to the claimant during this period are now an overpayment.

The issue of whether the claimant was precluded from receiving unemployment insurance benefits effective July 22, 2008 until the resumption of the next school term on August 18, 2008 is remanded to Iowa Workforce Development for an appealable decision.

871 IAC 24.22(2)j(1)(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.

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.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's unemployment separation if: (1) the benefits were not received due to fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

**DECISION:**

The representative's decision dated July 8, 2008, reference 01, is reversed. The claimant is not able and available for work for the period of June 8, 2008 through July 22, 2008 because the claimant was on an approved leave of absence. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency. The issue of whether the claimant has reasonable assurance of returning during the next academic term or year is also remanded to the Agency for an appealable determination.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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