

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMY L FLEMING
Claimant

APPEAL NO: 08A-UI-02711-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WATERLOO COMM SCHOOL DIST
Employer

**OC: 02/10/08 R: 03
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

Waterloo Community School District (employer) appealed a representative's March 13, 2008 decision (reference 01) that concluded Amy L. Fleming (clamant) was eligible to receive benefits because the Department concluded she had been on a short-term layoff. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 2, 2008. The claimant participated in the hearing. Mickey Waschkat, a human resource specialist, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant eligible to receive benefits for the week ending February 16, 2008?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

In late January 2008, the claimant resigned her position at a pre-kindergarten Headstart program to work as a substitute teacher for the employer. The claimant started working for the employer on January 24, 2008. As a substitute teacher the claimant works about 35 hours a week for the employer.

The claimant received notice she was to report to jury duty on February 5. The claimant reported and was selected. The claimant was on the jury February 9 through 16. As a result of the jury duty, the claimant was unable to work as a substitute teacher for the employer. The employer would have had the claimant work every day that week if the claimant had been available.

The claimant established a claim for benefits during the week of February 10, 2008. She filed a claim for the week ending February 16, 2008. The claimant received \$217.00 in benefits for this week.

REASONING AND CONCLUSIONS OF LAW:

Any person can establish a claim for benefits. Whether the person is eligible to receive benefits must be based on unemployment insurance laws and regulations. The only week at issue in this case for the claimant is the week ending February 16. To be eligible to receive benefit, each week a claimant files a claim she must be able to and available for work. Iowa Code section 96.4-3.

The facts establish the only reason the claimant did not work for the employer the week of February 10 was because she had been selected for jury duty. As a result of the claimant's jury duty, she was not available to work as a substitute teacher even though the employer needed her and had work available for her to do Monday through Friday that week. As a result of the claimant's jury duty, she was not available to work and is not eligible to receive benefits for the week ending February 16, 2008.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code section 96.3-7. The claimant is not legally entitled to receive benefits for the week ending February 16. She has been overpaid \$217.00 in benefits she received for this week.

DECISION:

The representative's March 13, 2008 decision (reference 01) is reversed. The claimant was not on a short-term layoff. Even though the employer had work for the claimant to do the week of February 10, she was not available to work because she was on jury duty. Since the claimant was not available to work, she is not eligible to receive benefits for the week ending February 16, 2008. The claimant is not legally entitled to receive benefits for this week and has been overpaid \$217.00 in benefits she received for this week.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs