

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTAL M CROTTS**

Claimant

**APPEAL NO. 09A-UI-15646-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE MAYTAG COMPANY**

Employer

**OC: 12/21/08**

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

Section 96.4-3 – Eligibility for Benefits

**STATEMENT OF THE CASE:**

The Maytag Company filed a timely appeal from an unemployment insurance decision dated October 9, 2009, reference 01, that allowed benefits to Christal M. Crotts for the week ending September 5, 2009 upon a finding that she was on a short term layoff. Due notice was issued for a telephone hearing to be held November 19, 2009. With the consent of the parties, it was held November 20, 2009. Ms. Crotts participated on her own behalf. Human Resources Associate Matt Russell and Production Supervisor Chris Seaton participated for the employer. Exhibits One and A were admitted into evidence.

**ISSUE:**

Is the claimant eligible for unemployment insurance benefits for the week ending September 5, 2009?

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The Maytag Company scheduled Christal M. Crotts to work Monday through Thursday of the week beginning August 30, 2009 and ending September 5, 2009. Ms. Crotts called in ill on August 31, 2009 and voluntarily left early on September 2 and September 3, 2009. Work would have been available for her had she elected to stay on those days. She received unemployment insurance benefits for the week in question.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the claimant is eligible for unemployment insurance benefits for the week ending September 5, 2009. She is not.

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".

Failure to work the major portion of a scheduled work week for an individual's regular employer leaves the individual unavailable for work and thus ineligible for unemployment insurance benefits for that week. See 871 IAC 24.23(29). The evidence in this record establishes that the claimant worked less than half of her scheduled work week during the week that ended September 5, 2009. Therefore, she is not eligible for benefits for that week.

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 question of whether the claimant must repay the benefits she has received is remanded to the Unemployment Insurance Services Division.

**DECISION:**

The unemployment insurance decision dated October 9, 2009, reference 01, is reversed. The claimant is not entitled to receive unemployment insurance benefits for the week ending September 5, 2009. The question of recovery of those benefits is remanded to the Unemployment Insurance Services Division.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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