

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**COURTNEY A AHLRICHS**  
Claimant

**APPEAL NO. 09A-UI-15996-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ANAMOSA LODGE & SUITES LLC  
AMERICINN LODGE & SUITES**  
Employer

**Original Claim: 09/06/09  
Claimant: Respondent (2-R)**

Section 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The employer, AmericInn, filed an appeal from a decision dated October 13, 2009, reference 03. The decision allowed benefits to the claimant, Courtney Ahlrichs. After due notice was issued, a hearing was held by telephone conference call on December 1, 2009. The claimant participated on her own behalf. The employer participated by Manager Jennifer Koopmann.

**ISSUE:**

The issue is whether the claimant is able and available for work and whether the employer's account should be charged.

**FINDINGS OF FACT:**

Courtney Ahlrichs was hired by AmericInn May 26, 2009, as a full-time housekeeper. Full-time is considered 30 hours per week or more. None of the housekeeping staff could be guaranteed any specific number of hours, because the amount of work is dependent on the census on the hotel.

At the end of August 2009, the claimant contacted Manager Jennifer Koopmann and asked not to be scheduled on Tuesdays and Thursdays for the next 11 weeks, as she was going to school and would be in class those days. This would put the end of the class in mid-November, and the employer complied with her request and did not schedule her on those days.

On November 10, 2009, the claimant suffered a non-work-related injury and was released to return to work without restrictions effective December 2, 2009.

Courtney Ahlrichs has received unemployment benefits since filing a claim with an effective date of September 6, 2009.

## REASONING AND CONCLUSIONS OF LAW:

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".

871 IAC 24.23(29) provides:

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

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

The claimant was hired to work full-time and to be available seven days per week. She then restricted the days she would work by requesting not to be scheduled Tuesdays and Thursdays, and the employer accommodated her. At the end of the eleven weeks, she was further restricted by her doctor due to the non-work-related injury. Under the provisions of the above Administrative Code section, she is not able and available for work during this time and is ineligible for benefits.

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 unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

**DECISION:**

The representative's decision of October 13, 2009, reference 03, is reversed. Courtney Ahlrichs is ineligible for benefits, as she is not able and available for work.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw