

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JILL L TWISS**  
Claimant

**APPEAL NO: 10A-UI-03782-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**YOUNG MEN'S CHRISTIAN ASSOCIATION**  
Employer

**OC: 01/03/10**  
**Claimant: Appellant (3-R)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Jill Twiss (claimant) appealed a representative's March 4, 2010 decision (reference 03) that concluded she was not eligible to receive unemployment insurance benefits because she was not available to work with Young Men's Christian Association (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 27, 2010. The claimant participated personally. The employer participated by Tami Ruppel, Payroll Administrator, and Britt German, Associate Executive Director.

**ISSUE:**

The issue is whether the claimant is available 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 on October 1, 2009, as a part-time wellness coach. The claimant requested time off beginning January 16, 2010, due to the death of her child on January 15, 2010. She promised to notify the employer when she was able to return. The claimant returned to work on February 7, 2010. She continues to work for the employer in the same capacity as she was hired.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes the claimant was not available to work for the three-week period ending February 6, 2010.

871 IAC 24.23(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

When an employee requests and is granted time off, she is considered to be unavailable for work. The claimant requested time off and the employer granted her request. The change in hours was initiated by the claimant. She is considered to be unavailable for work for the three-week period ending February 6, 2010. The claimant is disqualified from receiving unemployment insurance benefits for the three-week period ending February 6, 2010, due to her unavailability 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 March 4, 2010 decision (reference 03) is modified in favor of the respondent. The claimant is disqualified from receiving unemployment insurance benefits for the three-week period ending February 6, 2010, because she was not available for work with the employer. 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/pjs