

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

PAULINE R MCDONALD
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HOSPERS IA 51238

GOLDEN CRISP PREMIUM FOODS
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PO BOX 8905
CUDAHY WI 53110-8905

Appeal Number: 06A-UI-01183-CT
OC: 12/25/05 R: 01
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Pauline McDonald filed an appeal from a representative's decision dated January 24, 2006, reference 02, which denied benefits effective December 25, 2005 on a finding that she was not able to work because of pregnancy. After due notice was issued, a hearing was held by telephone on February 16, 2006. Ms. McDonald participated personally and Exhibit A was admitted on her behalf. The employer participated by Phil Reinders, Human Resources Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. McDonald began working for Golden Crisp Premium Foods on October 18, 2004 as a full-time production employee. She was working ten hours per day but her doctor reduced her to working eight-hour days in November of 2005 because of her pregnancy. On or about December 5, 2005, Ms. McDonald presented the employer with a statement from her doctor further limiting her work activities. She was to perform seated work for eight hours or less per day for five days a week or fewer. Because of the number of people needing a light-duty accommodation, the employer was only able to provide Ms. McDonald with four hours of work per day beginning in December.

Effective January 30, 2006, Ms. McDonald's doctor has removed her from all work activity until six weeks after the birth of her child. Her baby is due March 18, 2006.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. McDonald is eligible to receive job insurance benefits on her claim filed effective December 25, 2005. She filed for benefits because she was working fewer hours than previously worked. However, the reduction was not at the employer's initiative. Ms. McDonald's hours were reduced only because her doctor advised that she limit her work activity due to her pregnancy. Where there is a medical report submitted by a physician stating an individual is not able to work, the individual is not considered available for work within the meaning of the law. See 871 IAC 24.23(6).

The doctor's note of December 5, 2005 clearly indicates that Ms. McDonald was not able to perform her usual job and was not able to work the ten-hour days she had been working. Her doctor has subsequently indicated in writing that Ms. McDonald was not able to perform any work from January 30, 2006 until after the birth of her child. Inasmuch as the medical reports establish that Ms. McDonald was unable to work, she is not entitled to job insurance benefits to cover the time she is not able to work.

The administrative law judge appreciates that Ms. McDonald was able to work eight-hour days when she filed her claim and until taken off work completely on January 30. However, she was not able to perform her usual job, only light-duty work. The employer provided her with the only light-duty work available, which was four hours each day. But for the pregnancy, Ms. McDonald would have been working ten hours each day.

DECISION:

The representative's decision dated January 24, 2006, reference 02, is hereby affirmed. Ms. McDonald is not eligible for job insurance benefits effective December 25, 2005 as she did not satisfy the availability requirements of the law. Benefits are withheld until such time as establishes that she is available for and able to work, provided she satisfies all other conditions of eligibility.

cfc/s