

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

REBECCA R FANN
PO BOX 95
SOLON IA 52333

D OF S FOODS INC
MCDONALDS – SYCAMORE MALL
105 5TH ST
CORALVILLE IA 52241

Appeal Number: 04A-UI-10273-DWT
OC: 08/29/04 R: 03
Claimant: Respondent (2)

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 are 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)

871 IAC 24.23(26) – Eligibility to Receive Partial Benefits

STATEMENT OF THE CASE:

McDonalds – Sycamore Mall (employer) appealed a representative's September 20, 2004 decision (reference 04) that concluded Rebecca R. Fann (claimant) was eligible to receive partial unemployment insurance benefits, and the employer's account was subject to charge because the claimant was not working the same number of hours for the employer as she had during her base period. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 13, 2004. The claimant participated in the hearing. Seth Bunns, an assistant manager, 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.

ISSUE:

Is the claimant eligible to receive partial unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on February 14, 2004. The employer hired her to work as a part time service worker. After the claimant started working, she has worked anywhere from 16 hours a week to 34 hours a week. The number of hours the claimant works depends on the employer's business needs. The claimant still works for the employer.

The claimant established a claim for benefits during the week of August 29, 2004. Her maximum weekly benefit amount is \$152.00. She has not received any unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

A claimant is considered partially unemployed in any week she works less than a regular full-time week and earns less than the maximum weekly benefit amount plus \$15.00. Iowa Code §96.16(38). However, when a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, she is not considered partially unemployed. 871 IAC 24.23(26).

The facts indicate that during the course of her employment the claimant worked anywhere from 16 to 34 hours a week, which depended on the employer's business needs. The facts establish the claimant is working the same hours and wages as contemplated when she started working and she is not working a reduced workweek that is different from the hours the parties contemplated agreed she would work at the time of hire. Therefore, the claimant is not partially unemployed. As of August 29, 2004, the claimant is not eligible to receive unemployment insurance benefits.

Since the claimant has not received any benefits, overpayment of benefits is not an issue.

DECISION:

The representative's September 20, 2004 decision (reference 04) is reversed. The claimant is working the hours she agreed to work at the time of hire. The employer has not reduced her work hours. Therefore, as of August 29, 2004, the claimant is not partially unemployed and she is not eligible to receive benefits.

dlw/kjf