

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

HELEN M HALL  
1430 PENN AVE APT 6  
DES MOINES IA 50316

MCDONALDS (JKB)  
PO BOX 189  
JOHNSTON IA 50131

Appeal Number: 05A-UI-05132-DT  
OC: 01/16/05 R: 02  
Claimant: Respondent (4)

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4-3 - Availability for Work  
Section 96.3-3 - Eligibility for Partial Unemployment Insurance Benefits  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

McDonald's (employer) appealed an unemployment insurance decision dated May 5, 2005 (reference 04) that concluded Helen M. Hall (claimant) was eligible to receive unemployment insurance benefits because she was not working at her same hours and wages with the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 2, 2005. The claimant participated in the hearing. Travis Brandt appeared on the employer's behalf. During the hearing, Employer's Exhibit One was entered into evidence. 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.

#### FINDINGS OF FACT:

The claimant filed a new claim for unemployment insurance benefits with an effective date of January 16, 2005, after her employment with Green Apple, L.C. ended. She worked 40 or more hours per week for Green Apple, L.C. at the rate \$7.00.00 per hour, and worked there from approximately October 1, 2004 through December 31, 2004. Prior to October 1, 2004, the claimant had worked for NPC International, Inc. at the rate of \$8.50 per hour, 40 or more hours per week. The claimant's weekly benefit amount was determined to be \$194.00 based on the wages paid by NPC. Her earnings limit was determined to be \$209.00. The claimant began receiving unemployment insurance benefits each week.

The claimant began working as a crew person for the employer on February 23, 2005, and has continued to work for the employer in that position ever since that time at the rate of \$7.00 per hour. She normally is scheduled to work about 35 hours per week, but her hours vary between 30 and 37.5 hours per week. The claimant had not filed weekly claims after the first week she started working for the employer, and upon attempting to notify the Agency that she had found new employment, her claim was reopened with an additional claim effective April 10, 2005. Being advised that she might be eligible for partial unemployment insurance benefits, the claimant filed one weekly claim for partial benefits and reported her earnings for that week as \$189.00, which was an estimate. She actually earned \$214.20 for working 30.6 hours that week. Based upon the claimant's reported estimated wage for the week, the Agency paid the claimant partial unemployment insurance benefits for that week in the amount of \$53.00.

Beginning her employment with the employer, there have been weeks in which she worked less than the 40 hours she had worked during her base period employment with the other employer, but it appears unlikely that there were weeks where she earned less than \$209.00 in gross wages. Further, since taking the job with the employer, she has determined to cease to actively seek other better-paying employment or more full time employment, as she has determined to pursue advancement within the employer's organization. She has not filed any weekly claims since beginning her employment with the employer but for the one week ending April 16, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was eligible for unemployment insurance benefits effective April 10, 2005, and thereafter. The claimant requested partial unemployment insurance benefits for a week she worked less than 40 hours.

Iowa Code section 96.3-3 provides:

3. Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.19, subsection 38, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

Iowa Code Section 96.19-38-b provides in part:

b. An individual shall be deemed partially unemployed in any week in which, while employed at the individual's then regular job, the individual works less than the regular

full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

In the present case, the claimant was working 40 or more hours per week during her base period employment with another employer. This establishes the claimant's "regular workweek" for determining whether she was partially unemployed under the statutes and rules. The claimant had weeks since filing her additional claim in which she worked less than the regular full-time hours she had been working for her base period employer; however, it does not appear that she had weeks where she earned less than \$209.00. Further, the claimant is not available for other work and is not actively seeking other employment because of her working for the employer. 871 IAC 24.23(23). Therefore, she does not currently meet the definition of partially unemployed and is not available for work as required by law. She is not presently qualified to receive partial unemployment insurance benefits.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because the claimant was not eligible for benefits for the week ending April 16, 2005, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

#### DECISION:

The unemployment insurance decision dated May 5, 2005 (reference 04), is modified in favor of the employer. The claimant is not qualified to receive partial unemployment insurance benefits effective April 10, 2005. The claimant is overpaid benefits in the amount of \$53.00.

ld/pjs