

BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319

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DOROTHY J TECH

Claimant,

and

MONGOOSE INC-MCDONALD'S

Employer.

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HEARING NUMBER: 07B-UI-08189

EMPLOYMENT APPEAL BOARD  
DECISION

NOTICE

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION: 96.4(3)**

DECISION

**UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE**

The employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board, one member dissenting, reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. The administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED**.

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Elizabeth L. Seiser

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John A. Peno

AMG/fnv

**DISSENTING OPINION OF MARY ANN SPICER:**

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. Ms. Tech was hired as a part-time crew person in August of 1999. She admits that her request for a leave of absence caused the schedule change, which reduced her hours. She also admits that she was given more hours on the schedule after she had accepted another job and was not available to work the additional hours. (Tr. 8, lines 5– 30)

The record establishes that Ms. Tech continued to reduce her availability based on her scheduling of therapy during the hours the employer would place her on the schedule. She would then, subsequently, decline the hours because she was not available during those particular days and hours. (Tr. 10, lines 9– 15) A reasonable person, in review of the testimony, would presume that the claimant's limited availability was self-imposed and that the claimant failed to prove that she was available to work the employer's additional scheduled hours. On the other hand, had the employer made more of a reasonable effort to show how McDonald's had accommodated Ms. Tech 's request of limited hours to full hours by showing the schedule containing dates and times, then the decision may have gone in the employer's favor. Yet and still, I would deny benefits based on the self-imposed unavailability of the claimant, which would reverse the administrative law judge's decision.

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Mary Ann Spicer

AMG/fnv

The employer has requested this matter be remanded for a new hearing. The Employment Appeal Board finds the applicant did not provide good cause to remand this matter. Therefore, the remand request is **DENIED**.

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Elizabeth L. Seiser

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Mary Ann Spicer

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John A. Peno

AMG/fnv