

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

SAMANTHA L DOMINICK

Claimant,

and

MCDONALD RESTAURANTS OF IA INC

Employer.

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HEARING NUMBER: 13B-UI-14615

**EMPLOYMENT APPEAL BOARD
DECISION**

N O T I C E

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: 96.5-1, 24.27

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE DENIED

The Claimant 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**.

Monique F. Kuester

Cloyd (Robby) Robinson

DISSENTING OPINION OF JOHN A. PENO:

I respectfully dissent from the decision of the Employment Appeal Board; I would remand the decision of the administrative law judge in its entirety. The record does not establish that the Claimant quit. Rather, it reveals that the Claimant gave a two-week notice that she needed to take a leave of absence that the Employer denied. The Claimant's request was in no way a quit. "[Q]uitting requires an intention to terminate employment accompanied by an overt act carrying out the intent." FDL Foods, Inc. v. Employment Appeal Board, 460 N.W.2d 885, 887 (Iowa App. 1990), accord Peck v. Employment Appeal Board, 492 N.W.2d 438 (Iowa App. 1992).

The manager wanted the Claimant to work 1-2 days weekly, which the Claimant was unable to do. While it is difficult to determine whether the Claimant is able and available for work in light of her request for an open-ended leave of absence, I would still not conclude that the Claimant quit her employment. Based on this record, I would allow benefits provided the Claimant is otherwise eligible.

John A. Peno

AMG/fnv