

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

TAMMY S BARKER
Claimant

APPEAL NO: 09A-UI-03887-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MCDONALD'S RESTAURANT
Employer

OC: 02/01/09
Claimant: Respondent (1)

Section 96.4-3 – Availability for Work
871 IAC 24.23(26) – Still Employed in a Part-Time Job

STATEMENT OF THE CASE:

McDonald's Restaurant (employer) appealed a representative's March 4, 2009 decision (reference 02) that concluded Tammy S. Barker (claimant) was eligible to receive benefits as of February 1, 2009, because she was working reduced hours for the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 7, 2009. The claimant participated in the hearing. Aaron Smith 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:

As of February 1, 2009, was the claimant working the same hours that the employer hired her to work?

FINDINGS OF FACT:

The employer hired the claimant to work on November 7, 2008, as a crew member at the Clarinda location. Crew employees are scheduled to work 20 to 30 hours a week. The claimant understood she was hired to work full-time and worked some 35-hour weeks.

In January 2009, the claimant was scheduled to work about 20 hours a week, but there were seven days she did not report to work because of illness or because of adverse weather conditions. Other days when the claimant reported to work, the supervisor sent employees, including the claimant, home early because business was slow.

The claimant established a claim for benefits during the week of February 1, 2009. The claimant worked four hours the week ending February 7 and two hours the week ending February 14, 2009. The claimant earned \$7.25 an hour.

REASONING AND CONCLUSIONS OF LAW:

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 a reduced workweek, the claimant cannot be considered partially unemployed. 871 IAC 24.23(26). The facts establish the employer usually scheduled the claimant to work 20 to 30 hours a week. During the weeks ending February 7 and 14, the claimant's hours were reduced. The facts do not indicate the claimant was unable to work more hours these weeks. Therefore, the claimant was able to and available to work these weeks. She is eligible to receive partial unemployment insurance benefits for the weeks ending February 7 and 14, 2009. Iowa Code § 96.4-3.

The employer is not one of the claimant's base period employers. This means that during the claimant's current benefit year, the employer's account will not be charged.

DECISION:

The representative's March 4, 2009 decision (reference 02) is affirmed. The claimant worked reduced hours the weeks ending February 7 and 14, 2009, and she was able and available to work more hours these weeks. For the weeks ending February 7 and 14, 2009, the claimant is eligible to receive partial unemployment insurance benefits. During the claimant's current benefit year, the employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css