

**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**

**ANDERIA L ROBB  
PO BOX 234  
HASTINGS IA 51540-0234**

**KOSMITH INC  
GLENWOOD MCDONALDS  
1512 S 11<sup>TH</sup> ST  
NEBRASKA CITY NE 68410**

**Appeal Number: 06A-UI-07955-DT  
OC: 07/09/06 R: 01  
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, 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.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96.4-3 - Able and Available  
Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits

STATEMENT OF THE CASE:

Kosmith, Inc./Glenwood McDonald's (employer) appealed a representative's August 4, 2006 decision (reference 02) that concluded Anderia L. Robb (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 23, 2006. The claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. Aaron Smith appeared on the employer's behalf and presented testimony from one other witness, Carrie Newman. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant currently eligible for partial unemployment insurance benefits while employed by the employer?

FINDINGS OF FACT:

The claimant started working for the employer on April 19, 2006. She works part-time (15 to 39 hours) as a crew person at the employer's Glenwood, Iowa restaurant. When she applied for employment, she indicated her availability for work as 5:00 a.m. to 4:00 p.m., seven days per week. In May 2006, the claimant told Ms. Newman, the store manager, that she could no longer work on weekends and that she could not start a work shift any earlier than 6:00 a.m. Ms. Newman advised the claimant at that time that these changes to her availability would likely reduce the number of hours she would be scheduled to work, as previously the claimant had worked at least every other weekend. On August 18, 2006, the claimant advised Ms. Newman that she could expand her availability to 6:00 a.m. to 6:00 p.m., but still only Monday through Friday.

The claimant established an unemployment insurance benefit year effective July 9, 2006. Her weekly benefit amount was calculated to be \$136.00 and her earnings allowance as \$151.00. The claimant's pay is \$6.00 per hour. For the week of July 9 through July 15, the claimant worked 22.83 hours. For the week of July 16 through July 22, she only worked 17.65 hours; however, this was at least in part because she had other persons cover approximately two of her shifts due to personal business. Likewise, for the week of July 23 through July 29, she worked only 16.25 hours, but again had other persons cover approximately two of her shifts due to personal business. For the week of July 30 through August 5, she worked 29.8 hours; for the week of August 6 through August 12 she worked 22.68 hours, and for the week of August 13 through August 19 she worked 38.67 hours. She made a weekly unemployment claim for only one week, but her wages for that week were in excess of \$151.00 and no benefits were paid.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is eligible for partial unemployment insurance benefits. The unemployment insurance law provides that a claimant is deemed partially eligible for unemployment insurance benefits if she has separated from her regular job and earns less than her weekly benefit amount plus \$15.00 in other employment. Iowa Code § 96.19-38-b.

Iowa Code § 96.19-38 provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

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.

An individual shall be deemed partially unemployed in any week in which the individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

871 IAC 23.43(4)a provides in part:

(4) Supplemental employment.

a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relieved of benefit charges....

871 IAC 24.23(16) and (29) provide:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

The claimant was not working reduced hours due to actions of the employer; the employer was providing the claimant with comparable hours to that at which she began employment but for the claimant's changes to her availability and her unavailability to work some of the shifts for which she had been scheduled. Further, other than for weeks in which the claimant was responsible for the reduction in her hours, the claimant is working hours and earning wages in excess of her earning allowance for eligibility for partial unemployment insurance benefits. The claimant is currently not eligible for partial unemployment insurance benefits.

#### DECISION:

The unemployment insurance decision dated August 4, 2006 (reference 02) is reversed. The claimant is not eligible for partial unemployment insurance benefits until or unless circumstances relating to her availability and the hours scheduled by the employer change in the future.

ld/cs