

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARAH WESTPHALEN

Claimant

APPEAL NO: 11O-UI-04430-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KPTOO INC/MCDONALD'S

Employer

OC: 10/31/10

Claimant: Respondent (2/R)

Iowa Code § 96.4-3 - Able and Available for Work

Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

McDonald's (employer) appealed an unemployment insurance decision dated December 16, 2010, reference 01, which held that Sarah Westphalen (claimant) was eligible for unemployment insurance benefits. Administrative Law Judge Susan Ackerman conducted an initial hearing on this matter in appeal 10A-UI-17536-BT in which benefits were denied. Although the claimant provided her telephone number for the hearing, she was not available when called and did not participate in the hearing.

The claimant's mother appealed the decision to the Employment Appeal Board indicating that the claimant did not participate because the claimant's mother did not know about the Notice of Hearing and did not know the hearing was taking place. It should be noted that the claimant and her mother live at the same physical address. The Employment Appeal Board remanded for a new hearing in an order dated March 31, 2011.

After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 4, 2011 and May 24, 2011. The claimant participated in the hearing with her mother Shirley Westphalen. The employer participated through Carol Grause, Store Manager and Amy Wurscher, Assistant Manager. Employer's Exhibits One through Five and Claimant's Exhibits A through D were admitted 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.

ISSUE:

The issue is whether the claimant is working the same hours and wages as in her original contract of hire with this employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The Findings of Fact set forth in the decision in appeal 10A-UI-17536-BT are adopted and incorporated herein as if set forth at length.

REASONING AND CONCLUSIONS OF LAW:

The Reasoning and Conclusions of Law of the administrative law judge in appeal 10A-UI-17536-BT are adopted and incorporated herein as if set forth at length.

DECISION:

The unemployment insurance decision dated December 16, 2010, reference 01, is reversed. The claimant does not meet the availability requirements of the law and does not qualify for unemployment insurance benefits. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs