

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

GAIL A MCDONALD

Claimant,

and

HY-VEE INC

Employer.

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HEARING NUMBER: 13B-UI-05135

**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: 96.19-38A

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Claimant, Gail A. McDonald was employed by Hy-Vee, Inc. beginning sometime in January 19, 2012 as a part-time employee in the Chateau Restaurant from Tuesday through Saturday, averaging between 20-26 hours weekly. The restaurant closed and her last day working there was March 2, 2013. The Employer offered her no other work even though the Claimant continued to be available for work. Ms. McDonald did not work again until the Employer subsequently offered her work as a demo person, which she accepted starting on May 20, 2013. Her new schedule changed in that she no longer had a 'set' schedule. She now worked on an 'on-call' basis. When the Claimant received her first check, she noted that she had only worked 16 hours during that first pay period. Ms. McDonald continues to be employed by Hy-Vee and is hoping to receive additional hours that would match the hours she previously worked.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4(3) (2009) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds:

The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirement of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for the benefits under section 96.5, subsection 1, paragraph "h".

The record establishes that Ms. McDonald began her employment with Hy-Vee in the Chateau Restaurant working part-time (20-26 hours a week). It is clear that when the restaurant closed and the Employer did not immediately retain her, there was no work available for her. However, Ms. McDonald continued to be able and available for work to the same extent she was when she was originally hired. When the Employer rehired the Claimant offering her work as a demo, through no fault or choice of her own, her hours were reduced due to the nature of the demo position. Ms. McDonald continued to be available for the same hours as she was originally hired to work, i.e., 20-26 hours weekly.

Iowa Code section 96.19(38) "b" provides:

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...

Although Ms. McDonald was not, in fact, a full-time employee, by analogy, she had established a regular work week consisting of 20-26 hours. Once her hours fell below that measure, and she continued to be able and available for work, Ms. McDonald established her eligibility for partial unemployment benefits.

DECISION:

The administrative law judge's decision dated June 6, 2013 is **REVERSED**. The Claimant was able and available for work within the meaning of the statute, and is considered partially unemployed. Accordingly, she is allowed benefits provided she is otherwise eligible.

John A. Peno

Monique F. Kuester

Cloyd (Robby) Robinson

AMG/fnv