

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

BRENDA K GILMORE
519 BALTIMORE ST
WATERLOO IA 50703

J AND M PARTNERSHIP
MCDONALDS
2016 HOWARD AVE
WATERLOO IA 50702

Appeal Number: 04A-UI-12508-AT
OC: 10-17-04 R: 03
Claimant: Appellant (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, 4th 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 96.5-2-a – Discharge/Requalification

STATEMENT OF THE CASE:

Brenda K. Gilmore filed a timely appeal from an unemployment insurance decision dated November 12, 2004, reference 03, which disqualified her for benefits following her separation from employment with J and M Partnership. After reviewing all matters of record, the administrative law judge concludes that no additional testimony is necessary.

FINDINGS OF FACT:

Having examined all matters of record, the administrative law judge finds: Brenda K. Gilmore filed a claim for unemployment insurance benefits effective October 17, 2004. Her weekly benefit amount is \$166.00. After her separation from employment with J and M Partnership but

before filing her present claim for unemployment insurance benefits, she earned more than ten times her weekly benefit amount in wages for insured work with another employer.

REASONING AND CONCLUSIONS OF LAW:

The question is whether Ms. Gilmore's separation from employment with J and M Partnership in August 2004 disqualifies her for benefits on and after October 17, 2004. The administrative law judge concludes that it does not.

Iowa Code Section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The statute in question provides that an individual may requalify for benefits by earning ten times his or her weekly benefit amount in wages for insured work in subsequent employment. Evidence before the administrative law judge establishes that Ms. Gilmore has done so. The disqualification is removed. Since the termination was originally held to be for excessive unexcused absenteeism, the employer shall not be charged with benefits.

DECISION:

The unemployment insurance decision dated November 12, 2004, reference 03, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible. No benefits shall be charged to the account of J and M Partnership.

tjc/b