

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

ZELDA V VANGUNDY
2507 E 16TH ST
DES MOINES IA 50316

FOODS INC
4343 MERLE HAY RD
DES MOINES IA 50310

Appeal Number: 04A-UI-08463-DT
OC: 02/08/04 R: 02
Claimant: Appellant (4)

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 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits
Section 96.4-3 - Availability for Work

STATEMENT OF THE CASE:

Zelda V. Van Gundy (claimant) appealed a representative's July 29, 2004 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits in conjunction with her employment with Foods, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 26, 2004. The claimant participated in the hearing. Pat Childress 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.

FINDINGS OF FACT:

After a lengthy period of employment with the employer that ended with the claimant's retirement in 2000, the claimant returned working for the employer in July 2001 as a deli clerk. She switched between working part time and working full time until approximately July 1, 2003, when at the claimant's request, she was solely employed part time. The understanding between the claimant and the employer was that she would still be employed approximately 20 hours per week, so that she could qualify for the employer's employee stock option purchase program. Her hourly rate of pay is \$9.00 per hour. The claimant established an unemployment insurance benefit year effective February 8, 2004. Her weekly benefit amount was calculated to be \$200.00. She filed an additional claim effective July 11, 2004 when she had a week with reduced hours.

Since she filed her additional claim, she has had one week in which she was not given at least 20 hours per week: the week ending July 17, for which she earned less than \$180.00 (\$9.00 x 20 hours).

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is eligible for partial unemployment insurance benefits and the employer's account is subject to charge. The unemployment insurance law provides that a claimant is deemed partially unemployed if she is not employed at her usual hours and wages and earns less than her weekly benefit amount plus \$15.00. Iowa Code Section 96.19-38-b.

871 IAC 24.23(26) provides:

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

(26) Where 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 on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

For the week ending July 17, 2004, the employer was not providing the claimant with substantially the same employment as it had agreed to provide when the claimant moved to the part-time position effective June 1, 2003. Consequently, for the current claim year, the claimant is qualified to receive partial unemployment insurance benefits for at least one week effective July 11, 2004, and could be eligible for future weeks, provided she was otherwise eligible, for weeks in which the employer does not make at least 20 hours of work available to the claimant.

DECISION:

The unemployment insurance decision dated July 29, 2004 (reference 02) is modified in favor of the claimant. The claimant is eligible for partial unemployment insurance benefits, provided she is otherwise eligible, for weeks she is not provided at least 20 hours of available work with the employer, specifically including the week ending July 17, 2004.

ld/pjs