

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DONALD D JOHNSON**  
Claimant

**APPEAL NO. 10A-UI-08947-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PER MAR SECURITY & RESEARCH CORP**  
Employer

**OC: 05/16/10/10**  
**Claimant: Appellant (1)**

Section 96.4-3 - Able and Available

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated June 18, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 9, 2010. Claimant participated. Employer participated by Sheryll McFall, human resources specialist. The record consists of the testimony of Donald Johnson and the testimony of Sheryll McFall.

**ISSUE:**

Whether the claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer provides security services to clients in the Cedar Rapids, Iowa, area. The claimant was hired on May 28, 2006. At the time he was hired, the claimant was considered "part time" and was assigned where needed by the employer. For approximately three and one half years, the claimant worked at the General Mills site every Thursday and Friday for 16 hours a week. General Mills changed its requirements for security personnel and these hours were no longer available as of May 14, 2010. Other assignments were available but the claimant did not want to work on weekends as he was accustomed to traveling to Nebraska and Wisconsin to see his family. Weekend hours are available with the employer and the claimant could still be working if he were willing to accept weekend assignments. Weekend hours are customary in the security industry.

**REASONING AND CONCLUSIONS OF LAW:**

871 IAC 24.23(16) provides:

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.

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.

The evidence in this case established that the claimant was hired in May 2006 as essentially an on-call employee to provide security services as needed. The claimant's hours were contingent on whether the employer had requests for security services from its clients. The claimant has always been a part-time, not a full-time employee. Whether he worked was dependent upon whether work was actually available. The claimant has never wanted to work on the weekends.

The claimant did have an assignment at General Mills that lasted for approximately three and a half years. General Mills changed its requirements and the employer asked the claimant if he would accept weekend hours. Weekend work was available and weekend work is customary in the security industry. The claimant refused weekend work, because he wanted to be available to travel to Nebraska and Wisconsin to see his family.

The administrative law judge concludes that the claimant is not able and available for work as he has unduly restricted his availability to part time work during the week. The claimant does not want to work weekends, a time when work is available from the employer. Testimony from the employer established that weekend work is customary in the security industry. Since the claimant is unwilling to work such hours, he is not able and available for work. In addition, the claimant is still a prn employee for the employer. Benefits are denied.

**DECISION:**

The decision of the representative dated June 18, 2010, reference 01, is affirmed. The claimant is not able and available for work. Benefits are denied as of May 14, 2010.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs