

Since there is no agreement, the decision of the administrative law judge is affirmed by operation of law. The Findings of Fact and Reasoning and Conclusions of Law of the administrative law judge are adopted by the Board and that decision is **AFFIRMED** by operation of law. See, 486 871 3.3(3).

John A. Peno

Monique F. Kuester

Elizabeth L. Seiser

AMG/fnv

DISSENTING OPINION OF JOHN A. PENO:

I respectfully dissent from the decisions of my fellow Board members; I would reverse the decision of the administrative law judge. I would find that both the claimant and the employer agree that when the claimant was hired, it was understood that he could not work weekends. (Tr. 4-5) The claimant was assigned to a General Mills facility for approximately 3 ½ years, working 16 hours. (Tr. 2) The employer informed him that his hours were going to change. After the change, the claimant indicated that he still couldn't work weekends; however, he remained able and available to the same extent he was during the past 3 ½ years, but the employer did not call him for work. (Tr. 3) There was no work available for him. I would allow benefits provided he is otherwise eligible.

John A. Peno

AMG/fnv

SEPARATE DISSENTING OPINION OF ELIZABETH L. SEISER:

I respectfully dissent from the decisions of my fellow Board members; I would remand this matter for further consideration. The record is lacking testimony as to whether or not the claimant is qualified for other types of work (and actively seeking same) where there's a reasonable chance of obtaining 16 hours during the weekdays to which he's limiting himself.

Elizabeth L. Seiser

AMG/fnv