

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

JESUS G HERNANDEZ

Claimant

and

QPS EMPLOYMENT GROUP INC

Employer

HEARING NUMBER: 17BUI-09124

**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: 96.4-3, 24.22-2

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

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 the administrative law judge's decision is correct. With the following modification, the administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED** with the following **MODIFICATION**:

The Employment Appeal Board would modify the administrative law judge's Findings of Fact as follows:

The Claimant requested full-time employment on either the second or third shifts because he anticipated being in school between 8:00 a.m. and noon. The Employer did not have work available within that time frame until September 15, 2017, which he accepted.

The Employment Appeal Board would modify the administrative law judge's Reasoning and Conclusions of Law as follows:

The Claimant did not unduly limit his availability. Rather, he provided credible testimony that he was able and available to work alternative shifts (2nd and 3rd), except the 1st shift, in spite of his school schedule. For this reason, we conclude that he has rebutted the presumption of unavailability due to his being a full-time student. See, *Savage v. Iowa Department of Job Service*, 361 N.W.2nd 329 (Iowa App. 1984)

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

AMG/fnv