

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WALTER R OHANNESSIAN
Claimant

APPEAL NO. 10A-UI-01027-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 12/13/09
Claimant: Appellant (1)

Iowa Code section 96.4(3) – Able & Available
Iowa Code section 96.19(38) – Partial Unemployment

STATEMENT OF THE CASE:

Walter Ohannessian filed a timely appeal from the January 7, 2010, reference 01, decision that denied benefits based on an Agency conclusion that he was unduly restricting his work availability. After due notice was issued, a hearing was held on March 1, 2010. Mr. Ohannessian did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Maureen Cosgrove, Store Counsel, represented the employer and presented testimony through Matt Novy, General Manager. Exhibits One through Four were received into evidence.

ISSUE:

Whether the claimant has been able to work and available for work since establishing his claim for benefits.

Whether the claimant has been partially unemployed since he established his claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Walter Ohannessian started his part-time employment with Menard, Inc., on April 9, 2009, and continues to work for the employer as a stock clerk. At the beginning of the employment Mr. Ohannessian generally worked 20 hours per week, 5:00 to 9:00 a.m., Monday through Friday. In November 2009, Mr. Ohannessian changed his work availability so that he was working primarily just one shift on Saturdays. Mr. Ohannessian made the change for two reasons. One reason was that he had accepted other employment as a bus driver for the Urbandale School District. Another reason was that he planned to provide child care for his grandchildren. The employer continued to have the original hours available for Mr. Ohannessian.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

An individual shall be deemed *partially unemployed* in any week in which, while employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars. Iowa Code section 96.19(38)(b).

Workforce Development rule 871 IAC 24.23 provides, in relevant part, as follows:

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.

(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 weight of the evidence indicates that Mr. Ohannessian cannot be deemed partially unemployed, since the decrease in his work hours at Menard's was self-inflicted.

The weight of the evidence indicates that Mr. Ohannessian does not meet the definition of being "available" for work under Iowa Code section 96.4(3). This is because Mr. Ohannessian is not available for all the hours that Menard's has available for him, has other employment, has family obligations that impact on his availability for work, and has presented no evidence to prove that he meets the definition of "available" for work under Iowa Code section 96.4(3). Benefits are denied effective December 13, 2009.

DECISION:

The Agency representative's January 7, 2010, reference 01, is affirmed. The claimant has not been "available" for work under the law since he established claim for benefits. The claimant also has not been partially unemployed since he established his claim for benefits. Benefits are denied effective December 13, 2009.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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