

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GARY TURNER**  
Claimant

**APPEAL NO: 12A-UI-09973-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PER MAR SECURITY & RESEARCH CORP**  
Employer

**OC: 07/08/12**  
**Claimant: Appellant (2/R)**

Iowa Code § 96.4-3 - Able and Available for Work

**STATEMENT OF THE CASE:**

Gary Turner (claimant) appealed an unemployment insurance decision dated August 8, 2012, reference 01, which held that he was not eligible for unemployment insurance benefits because he was limiting his availability to work with Per Mar Security & Research Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 17, 2012. The claimant participated in the hearing. The employer participated through Barb McGuire, human resources payroll specialist. 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.

**ISSUE:**

The issue is whether the claimant is able and available to work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The employer witness testified the claimant worked as a full-time security guard from October 31, 2009 through May 2012, when he voluntarily reduced his hours to part-time. The employer's records show he voluntarily quit on August 25, 2012. There has been no determination as to the final separation from employment.

The claimant could not provide any dates or any specific, detailed information. He repeatedly questioned why the hearing was being held, even though it was his appeal. The claimant had difficulty answering simple questions and was even somewhat aggressive. He could not comprehend what a waiver meant, so the final separation issue could not be addressed in this hearing.

Iowa Workforce records, of which the administrative law judge took judicial notice, do not support the evidence provided by the employer witness. The wages the claimant received from this employer, account number 040781-000, are as follows:

2008/2	\$3,857.76
2008/3	\$4,307.26
2008/4	\$3,250.26
2009/1	\$4,438.88
2009/2	\$3,505.51
2009/3	\$3,244.38
2009/4	\$1,009.75
2010/1	\$ 610.50
2010/2	\$ 0.00
2010/3	\$ 224.32
2010/4	\$1,621.47
2011/1	\$ 349.20
2011/2	\$ 27.75
2011/3	\$ 0.00
2011/4	\$ 0.00
2012/1	\$1,831.16
2012/2	\$2,880.00

#### **REASONING AND CONCLUSIONS OF LAW:**

The issue to be determined is whether the claimant was limiting the number of hours he was available to work.

Iowa Code § 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 24.23(29) provides:

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

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

The evidence provided by the employer was inaccurate, and the claimant could not offer any clarification other than to claim he was not drawing benefits from this employer. However, Iowa Workforce records confirm the wages the claimant received from this employer indicate he worked on a part-time basis.

Consequently, there is insufficient evidence in this case to determine the claimant was not meeting the availability requirements of the law. Therefore, benefits are allowed, provided he is otherwise eligible.

An issue as to whether the claimant's final separation was disqualifying or not arose as a result of the hearing. This issue was not included in the notice of hearing for this case, and the case will be remanded to Quality Control for an investigation and determination as the final separation from this employer. 871 IAC 26.14(5).

**DECISION:**

The unemployment insurance decision dated August 8, 2012, reference 01, is reversed. Benefits are allowed, provided he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the final separation issue.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw