

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SELENE D CABALLERO BORGES
Claimant

APPEAL NO. 15A-UI-12669-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 10/25/15
Claimant: Appellant (2/R)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Selene Caballero Borges filed a timely appeal from the November 10, 2015, reference 01, decision that denied benefits effective October 25, 2015, based on an Agency conclusion that Ms. Caballero Borges was not authorized to work in the United States. After due notice was issued, a hearing was held on December 4, 2015. Ms. Caballero Borges participated. Spanish-English interpreter Ike Rocha assisted with the hearing. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Exhibits A and B were received into evidence.

ISSUES:

Whether the claimant has been authorized to work in the United States and available for work since October 25, 2015.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is a native of Mexico. The claimant is required to have a valid employment authorization card from the U.S. Citizenship and Immigration Services to legally perform work in the United States. The claimant's most recent employer was Hy-Vee. The claimant's employment at Hy-Vee ended on September 28, 2015 because her work authorization card expired on that day. The claimant had made a timely application to renew her work authorization card three months before the expiration of her work authorization card. The claimant learned on October 2, 2015, that her work authorization had been approved. The claimant received her new work authorization card on October 14, 2015. The claimant did not present the new work authorization card to Iowa Workforce Development until November 19 or 20, 2015, after she had appealed on November 16, 2015 from the November 10, 2015, reference 01, decision that denied benefits effective October 25, 2015. Since the claimant established her claim for benefits, she has made at least two job contacts per week in search of new employment. The claimant has also contacted Hy-Vee to request her job back.

REASONING AND CONCLUSIONS OF LAW:

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".

Iowa Code § 96.5-10 provides:

10. Aliens—disqualified. For services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for the purpose of performing such services, or was permanently residing in the United States under color of law at the time such services were performed, including an alien who is lawfully present in the United States as a result of the application of the provisions of § 212(d)(5) of the Immigration and Nationality Act. Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits. In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of the individual's alien status shall be made except upon a preponderance of the evidence.

Iowa Admin. Code r. 871-24.60(2) provides:

Alien. Any person who is not a citizen or a national of the United States. A national is defined as a person who lives in mandates or trust territories administered by the United States and owes permanent allegiance to the United States. An alien is a person owing allegiance to another country or government.

(2) It is required that information designed to identify illegal nonresident aliens shall be requested of all claimants for benefits. This shall be accomplished by asking each claimant at the time the individual establishes a benefit year whether or not the individual is a citizen.

a. If the response is "yes," no further proof is necessary and the claimant's records are to be marked accordingly.

b. If the answer is "no," the claimant shall be requested to present documentary proof of legal residency. Any individual who does not show proof of legal residency at the time it is requested shall be disqualified from receiving benefits until such time as the required proof of the individual's status is brought to the local office. The principal documents showing legal entry for permanent residency are the Form I-94 "Arrival and Departure Record" and the Forms I-151 and I-551 "Alien Registration Receipt Card." These forms are issued by the immigration and naturalization service and should be accepted unless the proof is clearly faulty or there are reasons to doubt their authenticity. An individual

will be required to provide the individual's alien registration number at the time of claim filing.

c. Any or all documents presented to the department by an alien shall be subject to verification with the immigration and naturalization service. The citizenship question shall be included on the initial claim form so that the response will be subject to the provisions of rule 24.56(96), administrative penalties, and rule 871-25.10(96), prosecution on overpayments.

There is no indication in the administrative file that the Agency has demanded proof of legal residence from this claimant or that the claimant has failed to provide such proof in response to such request.

The weight of the evidence establishes that the claimant has been authorized to work in the United States since she filed the claim that was effective October 25, 2015. The new employment authorization card was effective October 2, 2015. The claimant had received the card on October 14, 2015. The weight of the evidence indicates that the claimant has been able to work and available for work since she established her claim. The claimant not only was authorized to work, but was engaged in an active and earnest search for new employment with Hy-Vee or some other prospective employer. Based on the work authorization issue and the availability issue, the claimant has been eligible for benefits since she established the claim. The claimant must meet all other eligibility requirements.

This matter will be remanded to the Benefits Bureau for entry of a decision adjudicating the claimant eligibility for benefits and the employer's liability for benefits based on the separation from the Hy-Vee employment. The administrative law judge notes that the parties presented evidence at the November 9, 2015 fact-finding interview regarding the separation. The fact-finding interview resulted only in a decision regarding the claimant's availability for work, but did not lead to a decision adjudicating the separation.

DECISION:

The November 10, 2015, reference 01, decision is reversed. The claimant has been authorized to work in the United States, has been able and available for work, and has been engaged in an active and earnest search for new employment since she established the claim for benefits that was effective October 25, 2015. The claimant is eligible for benefits effective October 25, 2015, provided she meets all other eligibility requirements.

This matter is remanded to the Benefits Bureau for entry of a decision that adjudicates the claimant's separation from Hy-Vee.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs