

IOWA DEPARTMENT OF INSPECTIONS & APPEALS
Division of Administrative Hearings
Wallace State Office Building
Des Moines, Iowa 50319

DECISION OF THE ADMINISTRATIVE LAW JUDGE

EULALIO GARCIA
301 SHARON AVENUE
MARSHALLTOWN, IA 50158-2234

IOWA WORKFORCE DEVELOPMENT
INVESTIGATION AND RECOVERY
1000 EAST GRAND AVENUE
DES MOINES IA 50319-0209

DAN ANDERSON, IWD

Appeal Numbers: 10-IWDUI-057
OC: 11-29-09
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to the Department. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

March 26, 2010
(Dated and Mailed)

Iowa Code section 96.4-3 – Eligibility to Receive Benefits
Iowa Code section 96.5-10 – Disqualification Due to Alien Status

STATEMENT OF THE CASE:

Eulalio Garcia filed an appeal from a decision issued by Iowa Workforce Development on December 28, 2010, reference 01, holding Mr. Garcia was not eligible to receive unemployment benefits because he failed to provide proof he was legally authorized to work in the United States.

A telephone hearing was originally scheduled for March 1, 2010. It was discovered at that time that an interpreter was needed. The hearing was rescheduled for March 22, 2010 and was held

by telephone conference call. Mr. Garcia appeared and testified on his own behalf. Investigator Mary Piagentini appeared on behalf of Iowa Workforce Development. The documents contained in the administrative record and numbered 1 and 3-7 were considered.¹ The parties were assisted by an interpreter, Patricia VerPloeg.

FINDINGS OF FACT:

Eulalio Garcia originally filed a claim for unemployment benefits effective November 29, 2009. On his claim, Mr. Garcia noted he was not a U.S. citizen and he did not provide an alien registration number. Therefore, on December 10, 2009, Investigator Mary Piagentini sent Mr. Garcia a notice requesting that he provide proof he was legally authorized to work in the United States by December 21, 2010. The notice was addressed to Mr. Garcia at his home located at 301 Sharon Avenue in Marshalltown, Iowa.

As of December 24, 2009, Ms. Piagentini had not received a response to her request. Therefore, she caused the department to issue a decision on December 28, 2009, reference 01, holding that Mr. Garcia was ineligible for unemployment benefits.

Mr. Garcia filed this appeal. He testified he has worked for the same employer for twelve years and has filed for unemployment on numerous occasions. This has never happened to him before. Mr. Garcia stated that he did not receive the request from Ms. Piagentini even though it was mailed to the correct address. He testified he did not notice he was not receiving benefits because they are directly deposited into his bank account and he had no reason to check his account until three weeks after he applied for benefits. When he did check the account he discovered no benefits had been deposited. He then contacted his local office to inquire and was informed he needed to supply proof of his authorization to work. Mr. Garcia did supply a copy of his work permit to Ms. Piagentini at that time.

REASONING AND CONCLUSIONS OF LAW:

To be eligible to receive unemployment benefits, an unemployed individual must be able and available for work, and must be earnestly and actively seeking work.² An alien is disqualified from receiving benefits unless the individual was lawfully admitted for permanent residence at the time the services were performed, was lawfully present for the purpose of performing the services, or was permanently residing in the United States under color of law at the time the services were performed.³ Under IWD's rules, "[a]n individual who is not lawfully authorized to work within the United States will be considered not available to work"⁴

IWD must ask each claimant at the time the claimant establishes a benefit year whether or not the claimant is a citizen.⁵ If the claimant answers "yes," no further proof is necessary and the claimant's records are marked accordingly.⁶ If the claimant answers "no," IWD shall request that the claimant produce documentary proof of legal residency.⁷ "Any individual who does not show proof of legal residency at the time it is requested shall be disqualified from receiving

¹ Another document, numbered 2, was included in the file but was not the decision from which Mr. Garcia appealed. That decision is reflected in document number 7. Document number 2 was excluded from the record because it was irrelevant to the issues at hand.

² *Id.* § 96.4(3).

³ *Id.* § 96.5(10).

⁴ 871 IAC 42.22(2)o.

⁵ *Id.* 24.60(2).

⁶ *Id.* 24.60(2)a.

⁷ *Id.* 24.60(2)b.

benefits until such time as the required proof of the individual's status is brought to the local office."⁸ Under IWD's rules, "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."⁹

It is undisputed that Mr. Garcia is authorized to work in the United States. Investigator Piagentini argued he should be disqualified from receiving benefits until the date he provided proof of his authority to work, January 14, 2010. Mr. Garcia testified he did not receive the notice from Ms. Piagentini that he was to provide his papers to her. He testified that he has been employed by the same employer for twelve years and has filed for unemployment many times. He has never been asked to provide his documentation previously. Mr. Garcia stated that because he believed his benefits were being automatically deposited in his account, he had no reason to know they were being withheld. Not until he went to the bank to withdraw money did he discover there were no funds in his account. He immediately contacted his local Workforce Development office and discovered the problem. As soon as Mr. Garcia knew Workforce Development needed his papers, he provided them to Ms. Piagentini.

The record, however, demonstrates that the notice to provide documentation was mailed to Mr. Garcia at his correct address on November 29, 2009. Additionally, the department's decision that Mr. Garcia was ineligible for benefits because of his failure to submit the requested documents was mailed to the same address on December 28, 2009. Yet Mr. Garcia did not provide a copy of his papers until January 14, 2010, two weeks later, when he states he first discovered he was not receiving benefits. While the undersigned might believe that Mr. Garcia did not receive one mailing from the department sent to his correct address, it is beyond credibility that he did not receive the second, correctly addressed document. Therefore, the undersigned finds that Eulalio Garcia did receive the November 29, 2009 demand to present his authorization to work in the United States and IWD's decision must be affirmed.

DECISION:

The decision of Iowa Workforce Development dated December 28, 2009, reference 01, is AFFIRMED.

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⁸ *Id.*

⁹ *Id.* 24.60(2)c.