

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

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

DAN ANDERSON, IWD

Appeal Number: 08-IWDUI-114
OC: 07/06/08
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)

September 19, 2008

(Decision Dated & Mailed)

Section 96.4-3 - Able and Available
871 IAC 24.22(2)o – Lawfully Authorized to Work

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development Department decision dated August 14, 2008, reference 0, which held the claimant ineligible for benefits August 3, 2008, because the claimant was not legally authorized to work in the United States.

The hearing was held pursuant to due notice on September 15, 2008, by telephone conference call. The claimant did not participate. Cindy Stroud, Investigator, participated on behalf of Iowa Workforce Development.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness, and having considered all of the evidence in the record, finds that: The claimant filed an extended benefit claim for unemployment insurance benefits effective July 6, 2008. The claimant provided an illegible copy of his drivers' license and alien registration card to Iowa Workforce Development.

The department assigned Investigator Stroud to determine whether the claimant was legally authorized to work in the United States. Since Stroud could not read the copied-documents provided by the claimant, she requested on July 30, 2008 that he provide readable documents to her. The claimant failed to respond.

The claimant did not respond to the hearing notice.

REASONING AND CONCLUSIONS OF LAW:

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

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(96) 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.

(1) *Able to work.* An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

(2) *Available for work.*

0. *Lawfully authorized to work.* An individual who is not lawfully authorized to work within the United States will be considered not available for work.

The administrative law judge concludes that the claimant has failed to provide proof that he is legally authorized to work in the United States, and he is not eligible to receive unemployment benefits for the reason effective August 3, 2008 pursuant to the law sections cited above. If the claimant has the documentation that the department is requesting, then he should immediately take readable

documents to the department to show he is authorized to work in the United States.

DECISION:

The decision of the representative dated August 14, 2008, reference 01, 2008, is **AFFIRMED**. The Claimant is not eligible for benefits until he provides readable documentation to the department that he is able and available for work as he is legally authorized to work in the United States.

rls