

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

NOEMI F. NOLASCO
1524 NORTHWOOD DR.
DENISON, IA 51442-1078

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

DAN ANDERSON, IWD

Appeal Number: 08-IWDUI-137
OC: 09/07/08
Claimant: Appellant (2)

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 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)

October 22, 2008

(Decision Dated & Mailed)

Iowa Code section 96.4-3 – Able and available to work

STATEMENT OF THE CASE

Noemi F. Nolasco appealed a representative's decision dated September 30, 2008, reference 03 that she was not eligible to receive unemployment insurance benefits because she did not provide proof that she is a citizen or legally authorized to work in the United States.

A telephone hearing was scheduled for October 20, 2008. Prior to the hearing, Ms. Nolasco submitted a copy of her Employment Authorization Card which is valid from September 2, 2008 through March 9, 2009. Neither Ms. Nolasco nor anyone on behalf of Workforce Development appeared for the hearing.

FINDINGS OF FACT

Noemi F. Nolasco applied for unemployment insurance benefits effective September 7, 2008. On September 30, 2008, a representative's decision was issued stating Ms. Nolasco was ineligible for benefits because she had failed to provide proof she was a citizen or legally authorized to work in the United States.

Ms. Nolasco presently holds an Employment Authorization Card valid from September 2, 2008 through March 9, 2009. A copy of the card is in the record.

CONCLUSIONS OF LAW

The issue is whether the Ms. Nolasco is able and available to work.

Federal law prohibits the hiring of aliens who are not authorized to work in this country.¹ Additionally, Iowa law requires that an individual is eligible to receive unemployment benefits only if he or she is able and available to work.² The department's rules specifically provide that an individual who is not authorized to work in the United States will not be considered to be available for work.³ Thus, in order to qualify for unemployment benefits, a noncitizen must supply evidence that he or she is legally authorized to work in the United States.

Although the department correctly determined Ms. Nolasco was ineligible for benefits because she had not provided proof that she was authorized to work in this country, the evidence provided prior to hearing demonstrates that she does hold an Employment Authorization Card that was valid at the time of the original claim and which remains valid until March 9, 2009. Under these circumstances, the department's decision must be reversed.

DECISION

The decision of Iowa Workforce Development dated September 20, 2008, reference 03, is REVERSED. The department shall determine whether Ms. Nolasco is otherwise eligible for benefits.

¹ 8 USC §1324a(a)(1)(A).

² Iowa Code section 96.4(3).

³ 871 IAC24.22(2)(o).