

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

HUGO GALDAMES
PO BOX 45
PERRY, IA 50220

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

DAN ANDERSON, IWD

Appeal Number: 10-IWDUI-133
OC: 12/13/09
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)

June 29, 2010

(Decision Dated & Mailed)

Iowa Code section 96.4-3 – Able and available to work
Iowa Code section 96.3-7 – Overpayment of benefits

STATEMENT OF THE CASE

Hugo Galdamez appealed an Iowa Workforce Development decision February 15, 2010, reference 02, which held he was not eligible to receive unemployment insurance benefits because he failed to provide proof he is a citizen or legally authorized to work in the United States.

A telephone hearing was scheduled for June 28, 2010. Notice of the hearing was sent to all parties on June 1, 2010. At the time of the hearing neither Mr. Galdames nor anyone on behalf of Iowa Workforce Development appeared to participate. This decision is therefore based on the documents contained in the administrative file.

FINDINGS OF FACT

Hugo Galdames applied for unemployment insurance benefits effective January 24, 2010. On January 29, 2010, Investigator Mary Piagentini received an assignment to investigate Galdames' claim. On that February 1, 2010, Piagentini sent Galdames a *Notice To Report* which requested he provide her a copy of his Immigration & Naturalization I-94, Employment Authorization or Resident Alien Card on or before February 11, 2010. Although Mr. Galdames speaks Spanish, the notice was sent to him in English. (Record, pages 1, 5).

Galdames received the notice but, because he does not read English, he did not understand that it was from Workforce Development, that it involved his unemployment benefits or that Workforce Development expected action on his part. As a result, Mr. Galdames did not provide copies of his work authorization documents by the deadline. (Record, page 1).

On February 15, 2010, Workforce Development issued its decision holding that Galdames was ineligible for benefits effective February 8, 2010.

Subsequently, Galdames went to his bank to withdraw funds and discovered that he had not received unemployment insurance benefits after his first week of unemployment. He immediately visited the local Workforce Development office and was informed of the problem. An employee there showed Galdames what the letter requesting his documentation should look like and, when he returned home, he was able to locate the *Notice to Report*. Galdames then sent in a copy of his employment authorization card. (Record, page 1-2).

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.¹ 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.² Under Workforce Development's rules, "[a]n individual who is not lawfully authorized to work within the United States will be considered not available to work"³

Workforce Development must ask each claimant at the time the claimant establishes a

¹ *Id.* § 96.4(3).

² *Id.* § 96.5(10).

³ 871 IAC 42.22(2)o.

benefit year whether or not the claimant is a citizen.⁴ If the claimant answers “yes,” no further proof is necessary and the claimant’s records are marked accordingly.⁵ If the claimant answers “no,” IWD shall request that the claimant produce documentary proof of legal residency.⁶ “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.”⁷ 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.”⁸

Here, Galdames clearly did not provide a copy of his work authorization card when requested. However, the inquiry does not end there. IWD is subject to federal legislation prohibiting discrimination on the basis of national origin. Title VI of the Civil Rights Act of 1964 provides that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”⁹ The United States Supreme Court has interpreted Title VI, in the context of regulations promulgated by a federal agency, to prohibit conduct that has a disproportionate effect on Limited English Proficient (LEP) persons, classifying that conduct as national origin discrimination.¹⁰

U.S. Department of Labor regulations require all recipients of federal financial assistance from DOL to provide meaningful access to services to Limited English Proficient individuals.¹¹ DOL provides federal funding for, among other programs, Iowa’s unemployment insurance program. DOL has published guidance on this issue as it relates to provision of services to Limited English Proficient (LEP) individuals.¹² The guidance is not a regulation, but rather serves as a guide for recipients of federal financial assistance and provides a framework recipients may employ to determine how best to comply with their obligations to provide meaningful access to their programs for individuals who are limited English proficient. The guidance suggests translation of “vital” written materials and materials that are routinely provided in English to applicants.

It would seem obvious that a requirement to provide proof of authority to work in the United States as a prerequisite to eligibility for unemployment insurance benefits would meet the criteria to be considered a vital document. Yet in this case the request was sent to Galdames only in English. This raises the specter of noncompliance on IWD’s part. In this case, IWD failed to meet its obligation to provide Galdames with meaningful access to the unemployment insurance benefits program. Its decision denying him benefits must therefore be reversed.

⁴ *Id.* 24.60(2).

⁵ *Id.* 24.60(2)a.

⁶ *Id.* 24.60(2)b.

⁷ *Id.*

⁸ *Id.* 24.60(2)c.

⁹ 42 U.S.C. §80.3(b)(2).

¹⁰ *Lau v. Nichols*, 414 U.S. 563, 567-69 (1974).

¹¹ 29 CFR part 31.

¹² 68 Fed. Reg. 103 (effective May 29, 2003).

DECISION

The decision of Iowa Workforce Development dated February 15, 2010, reference 02 is **REVERSED**. The department shall take all steps necessary to implement this decision.

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