

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**CAMILO M CORONEL**  
**58 AVENUE A**  
**DENISON IA 514442-1837**

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

DAN ANDERSON, IWD

**Appeal Number: 08-IWDUI-071**  
**OC: 12/23/07**  
**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 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.

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(Administrative Law Judge)

June 6, 2008

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(Decision Dated & Mailed)

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Section 96.4-3 - Able and Available  
Section 96.5-10 – Resident Alien  
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 April 29, 2008, reference 01, which held the claimant ineligible for benefits effective December 23, 2007, because the claimant was not legally authorized to work in the United States.

The hearing was held pursuant to due notice on June 2, 2008, by telephone conference call. The claimant participated with the assistance of Interpreter, Angela Arellano. Larry Finley, Investigator, participated on behalf of Iowa Workforce Development.

## FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses, and having considered all of the evidence in the record, finds that: The claimant filed a claim for unemployment insurance benefits effective December 23, 2007. Since the claimant stated he was not a United States citizen, the issue whether he is authorized to work in the United States was assigned to Investigator Finley.

Finley checked with INS regarding claimant's work authorization, and it responded that he was for the period from May 30, 2001 to June 16 2005, and again, from June 15, 2007 to June 14, 2008.

Since INS had no record of claimant's work authorization from June 17, 2005 to June 14, 2007, Investigator Finley mailed a notice to the claimant to report for an in-person interview at the Denison, Iowa workforce center on April 10, 2008. The claimant did not report, and he did not respond to Finley telephone inquiries.

The base period of the claimant's unemployment claim is July 1, 2006 to June 30, 2007. Since the department had no proof that claimant was authorized to work in the United States during the base period of his unemployment claim, it deleted his wage credits that meant he did not have any qualified earnings to be eligible for unemployment. The effect of the wage deletion meant that claimant was not entitled to unemployment from the beginning of his claim, December 23, 2007.

The claimant and Finley agreed to a proposal to give the claimant an opportunity to provide proof that he was authorized to work from June 17, 2005 to June 30, 2007. The claimant would go to the Denison, Iowa workforce center to present his proof, and it would be faxed to Finley for his review. The record would be kept opened to Friday, June 6, 2008, for the claimant to provide the proof, and have Finley verify it for the record.

The claimant went to the Denison workforce center, and he provided his work authorization card for the period from June 17, 2006 to June 16, 2007, and it was faxed to Investigator Finley for his review. Finley faxed his copy of the card to the Division of Administrative Hearings on June 3<sup>rd</sup> with a cover letter that accepts it as proof of the claimant being authorized to work during the base period of his claim, re-instating his wage credits for that period, and his entitlement to unemployment benefits on his current claim.

## 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 is authorized to work in the United States during the base period of his unemployment claim (June 17, 2006 to June 16, 2007), such that no availability disqualification is imposed on his current claim, effective December 23, 2007 pursuant to the law sections cited above. The claimant provided the proof that he is authorized to work, such that his base period wages are credited to his current unemployment claim that allows him benefits.

**DECISION:**

The decision of the representative dated April 29, 2008, reference 01, is REVERSED. The claimant is legally authorized to work in the United States, and is entitled to receive benefits, provided he is otherwise eligible. The December 23, 2007, availability disqualification is removed.

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