

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

JULIAN S JUAREZ
Claimant

APPEAL NO: 10A-UI-13815-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 09/05/10
Claimant: Appellant (4-R)

Section 96.4-3 – Able and Available
871 IAC 22(2)o – Legally Authorized to Work

STATEMENT OF THE CASE:

The claimant appealed a department decision dated September 28, 2010 ,reference 02, that held he was not eligible for benefits effective September 5, 2010, because he is not legally authorized to work in the United States. A telephone hearing was held on November 2, 2010. The claimant did not participate. Holly Carter, Unemployment Specialist, participated for the employer. Employer Exhibit One was received as evidence.

ISSUE:

Whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The claimant worked for the employer on his last assignment beginning November 9, 2009. The employer warned claimant his employment authorization card expires March 20, 2010, and he should seek to renew it. When the claimant failed to renew his card by March 9, the employer advised him he could no longer work until he renewed it.

The claimant renewed his card for the period beginning May 4, 2010 and ending May 3, 2010. The claimant provided his card as proof he could work to the employer on October 29. The claimant failed to respond to the hearing notice.

REASONING AND CONCLUSIONS OF LAW:

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".

The administrative law judge concludes that the claimant is legally authorized to work effective May 4, 2010, and the availability disqualification is removed.

The claimant provided evidence in this matter and in-person to the employer that his employment authorization card has been renewed effective May 4, 2010.

The administrative law judge further concludes the employer protest regarding the employment separation of March 9, 2010 is remanded for a fact-finding decision.

DECISION:

The department decision dated September 28, 2010 reference 02 is modified. The claimant is able and available for work effective May 4, 2010. The employment separation issue protested by the employer for March 9, 2010 is remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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