

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BERTHA ALICIA VAZQUEZ
Claimant

APPEAL NO. 11A-UI-15166-WT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 10/16/11
Claimant: Appellant (2)**

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a fact-finding decision dated November 18, 2011, reference 01, which held claimant not able and available for work. After due notice, a telephone conference hearing was scheduled for and held on February 21, 2012. Claimant participated personally. Anna Pottebaum was sworn in as the interpreter. Employer participated by Kris Travis, Employment Manager.

ISSUE:

The issue in this matter is whether claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Bertha Alicia Vazquez was employed by Tyson Fresh Meats in the Columbus Junction, Iowa facility. She was a team member. She began work on May 13, 2008. She was terminated on August 13, 2011. Her employment was terminated (I-766) because her work authorization, known as an I-766, had expired.

Tyson's policy dictates that an employee who does not have a valid authorization to work, may not report for work. It allows a 30-day "grace period" to reauthorize before the employee is formally terminated.

In June 2011, claimant became aware that her work permit was set to expire in August. In June, claimant went to an attorney to attain reauthorization. She acted in good faith attempting to reauthorize prior to the expiration of her permit. She testified credibly that her attorney did not file the application on time and she did not receive her authorization before the "grace period" expired. She received her work authorization on October 12, 2011. She immediately went back to Tyson and spoke with Kris Travis. She was not allowed to return to work because she did not report within the 30-day grace period.

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".

Foreign workers who do not possess valid work authorization are not considered to be able and available for work.

10. Aliens – disqualified. For services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for the purpose of performing such services, or was permanently residing in the United States under color of law at the time such services were performed, ...”

Iowa Code section 96.5(10) (2011).

In this case, Ms. Vazquez was not available for work from August 15, 2011, until October 14, 2011. She received her valid work authorization papers on October 12, 2011, and reported for work on October 14, 2011. She is considered able and available for work as of that date.

DECISION:

The decision of the representative dated November 18, 2011, reference 01 is reversed. Claimant is eligible to receive unemployment insurance benefits, effective October 16, 2011, provided claimant meets all other eligibility requirements.

Joseph L. Walsh
Administrative Law Judge

Decision Dated and Mailed

jlw/pjs