

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ZOILA M RIVERA
Claimant

APPEAL NO. 07O-UI-06680-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

**OC: 04/22/07 R: 02
Claimant: Appellant (4)**

Section 96.4-3 – Ability to and Availability for Work

STATEMENT OF THE CASE:

Zoila M. Rivera (claimant) appealed a representative's May 11, 2007 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits as of March 13, 2007, because she did not have proof she was legally authorized to work in the United States. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was initially held on May 31, 2007. The claimant did not participate in the hearing. On June 1, 2007, an administrative law judge affirmed the May 11, 2007 decision.

The claimant appealed the June 1 decision to the Employment Appeal Board. The Employment Appeal Board remanded this matter to the Appeals Section for a new hearing. After hearing notices were again mailed to the parties' last-known addresses of record, a telephone hearing was held on July 26, 2007. The claimant participated in the hearing. The employer did not participate in the July 26 hearing. Ike Rocha translated the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

What date did the claimant have a valid work permit to work in the United States?

FINDINGS OF FACT:

The claimant had a valid work permit to work in the United States, but it expired in September 2006. In June 2006, the claimant applied for a new work permit. After the claimant obtained her first work permit, she moved to Marshalltown. As a result of her moving to Marshalltown, the claimant did not receive letters the Department of Homeland Security sent to her previous address about appointments she had to attend to receive another work permit. Even though her employer, Swift & Company, talked to the claimant about her work permit in December 2006, the claimant did not contact anyone at Homeland Security until after the employer ended her employment on March 13, 2007.

Sometime after March 13, 2007, the claimant contacted the Department of Homeland Security and received information as to what she needed to do to obtain a work permit so she could

legally work in the United States. The claimant ultimately received a work permit that is effective May 2, 2007, through September 30, 2007.

The claimant established a claim for unemployment insurance benefits during the week of April 22, 2007. The claimant has filed weekly claims through the end of June 2007.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits, she must be able to and available for work. Iowa Code § 96.4-3. A claimant who is not lawfully authorized to work in the United States is considered not available for work. 871 IAC 24.22(2)(o).

When the claimant established her claim for benefits she was not legally authorized to work because she did not possess a work permit that was effective as of April 22, 2007. The claimant, however, obtained documentation that she was legally authorized to work from May 2, 2007, through September 30, 2007. As of May 6, 2007, the claimant is available to work and is eligible to receive benefits.

Since a claimant's ability and availability for work are supposed to be determined each week a claimant files a claim for benefits, the Department should have previously held the claimant eligible to receive benefits as of May 6, 2007, because she had documentary proof that she was lawfully authorized to work.

The representative's decision from which the claimant appealed only considered her availability for work. The Claims Section has not yet issued a decision as to whether the claimant is qualified to receive benefits based on the reasons for her employment separation from the employer. This issue is remanded to the Claims Section.

DECISION:

The representative's May 11, 2007 decision (reference 01) is modified in the claimant's favor. The claimant is not eligible to receive benefits from April 22d through May 5, 2007, because she was not lawfully authorized to work in the United States. As of May 6, 2007, the claimant is eligible to receive benefits because she has documentary proof she is legally authorized to work in the United States as of May 2. The issue of whether the claimant is qualified to receive benefits based on the reasons for her employment separation from the employer is remanded to the Claims Section.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css