

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

Appeal Number: 08-IWDUI-050
OC: 03/16/08
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

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.

BOULARE GASSAMA
113 S FELLOWS AVENUE
OTTUMWA IA 52501-3332

STATE CLEARLY

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

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.

DAN ANDERSON, IWD

(Administrative Law Judge)

May 2, 2008

(Decision Dated & Mailed)

Section 96.5-10 – Resident Alien
Section 96.4-3 - Able and Available
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 1, 2008, reference 02, which held the claimant ineligible for benefits effective March 16, 2008, because the claimant was not legally authorized to work in the United States.

The hearing was held pursuant to due notice on April 29, 2008, by telephone conference call. The claimant participated. Cindy Stroud, Investigator, participated on behalf of Iowa Workforce Development.

Official Notice was taken of the claimant's Application for Asylum and Withholding of Removal.

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 March 16, 2008. Since the claimant disclosed he was not a United States Citizen, the issue whether he was authorized to work in the United States was referred to Investigator Stroud.

Stroud contacted Immigration & Naturalization (INS) to learn whether the claimant was authorized to work in this country. INS replied with a request to institute a secondary verification of claimant's alien number. Stroud mailed a notice to the claimant asking that he report not later than March 31, 2008, and provide a readable, two-sided copy of his INS documentation. When the claimant failed to do so, the department issued the decision to disqualify.

During the hearing, the claimant stated he had been granted asylum to stay in this country, and that he had proof he could work, also. The claimant followed an instruction to take his INS documentation to the Ottumwa, Iowa workforce center who faxed it to Investigator Stroud.

While it does appear that INS granted asylum for the claimant to remain in this country, it does not authorize him to work. It is the known practice of INS to issue a "departure card" that establishes the right to work in the United States in conjunction with granting asylum.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is able and available for work.

Iowa Code Section 96.5-10 provides: *Aliens-Disqualified.*

10. 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, including an alien who is lawfully present in the United States as a result of the application of the provisions of section 212(d)(5) of the Immigration and Nationality Act.

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 has failed to offer proof that he is legally authorized to work in the United States as of the date of this hearing, and the disqualification is applied to the effective date of his claim, March 16, 2008. The claimant remains ineligible for benefits until he can provide proof of his authorization to work to work in this country.

DECISION:

The decision of the representative dated April 1, 2008, reference 02, is AFFIRMED. The claimant is ineligible for benefits effective March 16, 2008 until he provides proof to the department (IWD) that he is legally authorized to work in the United States.

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