

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHELINE HATUNGIMANA
Claimant

NORDSTROM INC
Employer

APPEAL 22A-UI-10733-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/27/22
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the April 25, 2022 (reference 01) unemployment insurance decision that found claimant was not eligible for unemployment benefits effective February 27, 2022 as she was not authorized to work in the United States. The parties were issued due notice of the hearing. A telephone hearing was held on June 14, 2022. The claimant participated personally. Language Link provided language interpretation services to the claimant. The employer did not participate. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUE:

Was the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant worked full-time for Nordstrom Inc. beginning on January 27, 2022 and ending on February 27, 2022. A representative from the employer told her that she was not legally authorized to work in the United States. Claimant became a naturalized citizen on December 9, 2016 and has been able to and available to work in the United States.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was able to 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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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".

Iowa Admin. Code r. 871-24.60(2)a-c provides:

Alien. Any person who is not a citizen or a national of the United States. A national is defined as a person who lives in mandates or trust territories administered by the United States and owes permanent allegiance to the United States. An alien is a person owing allegiance to another country or government.

(2) It is required that information designed to identify illegal nonresident aliens shall be requested of all claimants for benefits. This shall be accomplished by asking each claimant at the time the individual establishes a benefit year whether or not the individual is a citizen.

a. If the response is "yes," no further proof is necessary and the claimant's records are to be marked accordingly.

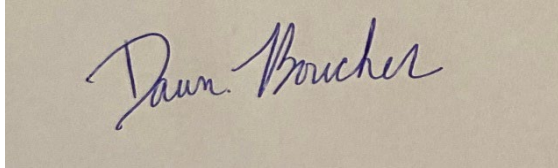
b. If the answer is "no," the claimant shall be requested to present documentary proof of legal residency. Any individual who does not show proof of legal residency at the time it is requested shall be disqualified from receiving benefits until such time as the required proof of the individual's status is brought to the local office. The principal documents showing legal entry for permanent residency are the Form I-94, Arrival and Departure Record, and the Forms I-151 and I-551, Alien Registration Receipt Card. These forms are issued by the U.S. Citizenship and Immigration Services and should be accepted unless the proof is clearly faulty or there are reasons to doubt their authenticity. An individual will be required to provide the individual's alien registration number at the time of claim filing.

c. Any or all documents presented to the department by an alien shall be subject to verification with the U.S. Citizenship and Immigration Services. The citizenship question shall be included on the initial claim form so that the response will be subject to the provisions of rule 871-25.10(96), prosecution on overpayments.

The burden is on the claimant to establish that she is able to work and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22. The claimant has established that she is legally authorized to work in the United States and benefits are allowed effective March 27, 2022, provided the claimant remains otherwise eligible.

DECISION:

The April 25, 2022 (reference 01) unemployment insurance decision is reversed. The claimant was legally authorized to work in the United States and has established that she was able to work effective March 27, 2022. Benefits are allowed, provided the claimant remains otherwise eligible.



Dawn Boucher
Administrative Law Judge

June 22, 2022
Decision Dated and Mailed

db/db