

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS

Division of Administrative Hearings
Lucas State Office Building
Des Moines, Iowa 50319

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**MARIA OCHOA DE CONTRERAS
1002 SOUTH SIXTH STREET
MARSHALLTOWN IA 50158**

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

Dan Anderson, IWD

**Appeal Number: 04-IWDUI-182
OC: 08/22/04
Claimant: Appellant (4)**

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.

STATE CLEARLY

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.

(Administrative Law Judge)

October 15, 2004

(Decision Dated & Mailed)

Section 96.4-3 - Able and Available
871 IAC 24.22 – Benefit Eligibility Conditions
871 IAC 24.22(o) – Legally Authorized to Work

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development Department decision dated September 13, 2004, reference 01, which held the claimant ineligible for benefits effective September 5, 2004, because she was not legally authorized to work in the United States.

A telephone conference hearing was scheduled for October 12, 2004, pursuant to due notice. The claimant participated with the assistance of an A.T. & T. language interpreter. Cindy Stroud, Investigator, participated on behalf of Iowa Workforce Development.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: The claimant filed a claim for unemployment insurance benefits effective August 22, 2004. The department disqualified the claimant, because it did not have evidence that she was in the process of renewing her authorization to work in the United States.

The parties agreed to provide the claimant with the opportunity to go to the Marshalltown workforce center and present proof of her "Notice of Action" seeking to renew her employment authorization for work in the United States. The parties stipulated that as soon as the department received the proof, it would unlock her unemployment claim to allow benefits, and remove the disqualification by a modification of the decision in this case.

The claimant presented the "Notice of Action" to the Marshalltown workforce center who faxed it to the Division of Administrative Hearings on October 12, 2004, and it was forwarded to Investigator Stroud for department action. Stroud informed the administrative law judge that she initiated action to unlock the claimant's claim, and remove the disqualification effective October 14, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is able and available for 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 96.19, 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.*

o. 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 established by the "Notice of Action" that she is renewing her employment authorization to work in the United States, and the department

has initiated action to remove the disqualification and allow unemployment benefits.

DECISION:

The decision of the representative dated September 13, 2004, reference 01, 2003, is MODIFIED in favor of the claimant. The claimant has established that she is renewing her authorization to work in the United States, and the department is removing the disqualification and allowing benefits.

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