

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

Appeal Number: 07-IWDUI-078
OC: 02/18/07
Claimant: Appellant (2)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

JUANA MARIE CHAVEZ
901 VIRGINIA STEET #3
SIOUX CITY IA 51105

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

INVESTIGATION AND RECOVERY
IOWA WORKFORCE DEVELOPMENT
1000 EAST GRAND AVENUE
DES MOINES IA 50319-0209

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.

BRIEN P O'BRIEN ATTORNEY
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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)

July 13, 2007

(Decision Dated & Mailed)

Section 96.4-3 - Able and Available
96.5-10 – Resident Aliens
871 IAC 24.2(1)g – Retroactive Benefits
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 May 14, 2007, reference 01, which held the claimant ineligible for benefits effective February 18, 2007, because the claimant was not legally authorized to work in the United States. The decision further denied the claimant's request for retroactive benefits during the period from February 18, 2007 through May 12, 2007.

The hearing was held pursuant to due notice on June 11, 2007, by telephone conference call. The claimant participated with her Attorney, Brien O'Brien. Larry Finley, Investigator, participated on behalf of Iowa Workforce Development.

The hearing was recessed, and an Order was issued to continue this matter with a subpoena issued to John Morrell Inc. with a request to produce a copy of the claimant's resident alien card. The hearing was re-scheduled and concluded on July 9, 2007. The claimant participated with the assistance of Interpreter, Anna Pottebaum, and her Attorney, Brien O'Brien. Larry Finley, Investigator, participated on behalf of Investigation and Recovery, Iowa Workforce Development. Claimant Exhibit A was received as evidence.

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 and other employees of John Morrell Inc. experienced a mass lay-off from employment in February 2007. Iowa Workforce Development representatives went to John Morrell to meet with the laid-off employees to provide assistance in the filing of unemployment claims.

A department representative assisted the claimant in the filing of her claim effective February 18, 2007. The claimant informed the representative that she had lost her resident alien card (green card). The claimant was told she would need to provide proof to the department that she is legally authorized to work in the United States in order to be eligible for unemployment benefits.

The claimant learned that it would cost her a fee of \$260 to replace her resident alien card. It took the claimant until April 23, 2007 to raise the fee at which time she submitted her application to INS for the duplicate card. The claimant received a Notice of Action from the Department of Homeland Security (I-797C) form as proof that she is legally authorized to work in the United States, and she took it to her local workforce center on May 14, 2007 in pursuit of her unemployment benefits.

A workforce representative denied the claimant's request for retroactive benefits for the period from the effective date of her claim through May 12, 2007, for failing to have proof of citizenship or that she was legally authorized to work.

In response to a subpoena, John Morrell Inc. Human Resource Director Joyce produced a copy of a copy of the claimant's Permanent Resident Card taken from her personnel file that identifies Juana M. Chavez (Holguin) with the same INS number as on her Notice of Action form with an expiration date of May 1, 2013., and showing her as a resident since February 27, 1989.

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.* 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

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.

871 IAC 24.2(1) No continued claim for benefits shall be allowed, ... , unless reasonable cause can be shown for the delay (in the filing of a claim).

The administrative law judge concludes that the claimant has provided sufficient proof to establish that she is legally authorized to work in the United States as of the effective date of her claim, and that she is entitled to retroactive benefits for the period from February 18, 2007 through May 12, 2007 pursuant to the law sections cited above. The claimant provided her employer with her Permanent Resident Card in order to be hired as a legal employee, and the employer representative provided a copy of that card that establishes the claimant is authorized to work in the United States from the initial date of her claim. The claimant understood she would not be eligible to receive benefits until she had the required proof that is a reasonable cause for the delay in the filing of her claims each week while waiting to raise the fee for the submission of a request for a duplicate card.

DECISION:

The decision of the representative dated May 14, 2007, reference 01, is REVERSED. The claimant is legally authorized to work in the United States effective February 18, 2007, and she is entitled to receive benefits, provided she is otherwise eligible. The claimant's request for retroactive benefits for the period from February 18, 2007 to May 12, 2007, is approved.

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