

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

VICTOR MENDEZ
Claimant

APPEAL 20A-UI-08666-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 04/05/20
Claimant: Appellant (4)

Iowa Code § 96.4(3) - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 16, 2020 (reference 03) unemployment insurance decision that denied benefits effective April 5, 2020 based on a finding that claimant had not provided proof of citizenship or legal authorization to work.

A telephone hearing was held on August 20, 2020. Claimant participated personally. Official notice was taken of the administrative record.

The record was reopened to allow claimant an opportunity to submit proof of employment authorization. Claimant did submit the documentation to the Appeals Bureau on August 24, 2020. The documentation was admitted into evidence as Claimant's Exhibits 1 and 2.

ISSUES:

Is the claimant able to work and available for work?

FINDINGS OF FACT:

Having heard the testimony and having examined the evidence in the record, the administrative law judge finds:

A notice was mailed to the claimant on June 29, 2020, requesting he provide copies of employment authorization documentation by July 9, 2020. The letter does not include a phone number or email address at which to reach the specific workforce deputy. The letter requests the documents not be sent by fax, either. The letter only allows claimant to return the documents in person or by regular mail.

Claimant did not receive the letter until July 4, 2020, a holiday weekend. Claimant mailed copies of his work authorization documentation as soon as he could, on Monday, July 6, 2020. Claimant also attempted to provide copies of the documents in person but was unable to, as the office was closed due to the pandemic.

Claimant then called to ensure the documents had been received. The workforce representatives he spoke with were unable to confirm whether the documents had been received. Claimant also requested to speak with the specific deputy assigned to his case, as there was a deadline. He was told there was no way to connect him with that deputy. He called back the following week and was told the documents had been received but they were received after the deadline and so could not be considered. He called a third time and learned at that time benefits had been denied.

Claimant was furloughed from his employment. His authorization to work subsequently expired on May 9, 2020. He recently learned his re-authorization request is being reviewed. The review of his request was delayed due to the pandemic. Claimant is authorized to work from May 10, 2018 until May 9, 2020. See Claimant's Exhibits 1 and 2.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the July 16, 2020 (reference 03) unemployment insurance decision that denied benefits effective April 5, 2020 based on a finding that claimant had not provided proof of citizenship or legal authorization to work MODIFIED in favor of appellant.

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".

Claimant did everything within his power to get the necessary documents to the department by the deadline. Any delay in those documents getting to the department by the deadline was due to the pandemic, error or misinformation from the department, and/or delay of USPS, not due to claimant. It would be fundamentally unfair to claimant and a denial of due process to not consider those documents due to failure to provide them by July 9, 2020.

Claimant's work authorization is valid until May 9, 2020. Claimant is therefore able and available for work until that date. After that date, claimant is not able to and available for work, as he cannot legally perform work. However, claimant should submit any subsequent authorization for work to the department for consideration as well, once those documents are in hand.

DECISION:

The July 16, 2020 (reference 03) unemployment insurance decision that denied benefits effective April 5, 2020 based on a finding that claimant had not provided proof of citizenship or legal authorization to work is MODIFIED in favor of appellant. Claimant is able to and available for work effective April 5, 2020 and continuing until May 9, 2020. He is therefore eligible for benefits during that time, provided he is otherwise eligible. He is not able to and available for work after that time and continuing until he provides proof of citizenship or legal authorization to work from that date forward.



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August 27, 2020
Decision Dated and Mailed

abd/sam