

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KAOUTAR AYATT**  
Claimant

**APPEAL 16A-UI-09901-JP-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 08/14/16  
Claimant: Appellant (2)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the September 8, 2016, (reference 04), unemployment insurance decision that denied benefits based upon failure to provide proof of citizenship or legal authorization to work in the United States. After due notice was issued, a telephone conference hearing was scheduled to be held on October 17, 2016. Claimant participated. CTS Language Link interpreter ID number 4888 interpreted on claimant's behalf.

**ISSUE:**

Is 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 is not a citizen, but is legally authorized to work in the United States. Claimant did not present a copy of her Social Security card and permanent resident card that shows she is a resident. Claimant received her green card December 2015 and it expires December 2025. In February 2016, claimant was employed by Employer Solutions Staffing Group and was assigned at EQUIFAX. Claimant's assignment ended in August 2016. Claimant is currently working as a caregiver for REM Iowa. Claimant was been working for REM Iowa since September 30, 2016. Claimant received this decision, but did not know where to submit the paperwork.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that claimant is able to work and available for work.

Iowa Code § 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".

Iowa Admin. Code r. 871-24.22(2) provides:

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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Code § 96.5(10) provides:

An individual shall be disqualified for benefits:

10. 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, 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. Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits. In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of the individual's alien status shall be made except upon a preponderance of the evidence.

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 immigration and naturalization service 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 immigration and naturalization service. The citizenship question shall be included on the initial claim form so that the response will be subject to the provisions of rule 24.56(96), administrative penalties, and rule 871-25.10(96), prosecution on overpayments.

Iowa Admin. Code r. 871-24.22(2)o provides:

**24.22(2) Available for work.** The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

*o. Lawfully authorized work.* An individual who is not lawfully authorized to work within the United States will be considered not available for work.

Claimant is lawfully authorized to work. Although claimant did not present her a copy of her Social Security card and permanent resident card that shows she is a resident, she did present sufficient testimony to this administrative law judge that she is authorized to work. Claimant testified she obtained her green card in December 2015 authorizing her to work. Claimant also testified this authorization expires in December 2025. Furthermore, claimant worked on assignment for EQUIFAX starting in February 2016 and after that assignment ended claimant has regained employment with REM Iowa since September 30, 2016, which corroborates her testimony that she is authorized to work. Benefits are allowed effective August 14, 2016.

**DECISION:**

The September 8, 2016, (reference 04) unemployment insurance decision is reversed. Benefits are allowed effective August 14, 2016, provided claimant is otherwise eligible.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

jp/rvs