

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

<b>ARMEL M MUSHEKURU</b> Claimant  <b>KIRKWOOD COMMUNITY COLLEGE</b> <b>AREA 1</b> Employer	68-0157 (9-06) - 3091078 - EI  <b>APPEAL NO. 17A-UI-00925-JTT</b>  <b>ADMINISTRATIVE LAW JUDGE DECISION</b>  <b>OC: 12/18/16</b> <b>Claimant: Respondent (2/R)</b>
--	---

Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the January 19, 2017, reference 02, decision that allowed benefits to the claimant effective December 18, 2016, provided the claimant was otherwise eligible, based on the claims deputy's conclusion that the claimant was temporarily laid off and both able to work and available for work within the meaning of the law. After due notice was issued, a hearing was held on February 15, 2017. Claimant Arnel Mushekuru did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. Sheri Hlavacek represented the employer and presented additional testimony through Sarah Brown. Exhibit 1 was received into evidence. The administrative law judge took official notice of the following agency administrative records: DBRO and KCCO.

**ISSUE:**

Whether the claimant has been able to work and available for work since the claimant established the claim for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Arnel Mushekuru began his employment with Kirkwood Community College in July 2016 and last performed work for the employer on December 18, 2016. Mr. Mushekuru worked as a full-time night steward at the Hotel at Kirkwood. His supervisor was Chris Oetker, Pastry Chef. Mr. Mushekuru is not a United States citizen. In order to legally work in the United States, Mr. Mushekuru must have valid authorization from the United States Citizenship and Immigration Services (USCIS). Mr. Mushekuru had such authorization at the time he began his employment at Kirkwood, but that authorization expired on November 20, 2016. On November 1, 2016, Human Resources Generalist Sarah Brown learned from Kirkwood's payroll department that Mr. Mushekuru's work authorization was about to expire. On November 2, Ms. Brown spoke with Mr. Mushekuru and the impending expiration of his work authorization. Ms. Brown told Mr. Mushekuru that he would not be able to work for Kirkwood beyond November 20, 2016 unless he presented a new valid work authorization card. Mr. Mushekuru waited until November 17, 2016 to apply to renew his work authorization through USCIS. Mr. Mushekuru presented Ms. Brown with a receipt for that November 17, 2016 application. Ms. Brown conferred with the college's legal counsel, who concluded the application to renew the work authorization card was insufficient to establish work authorization for purposes of completing the required USCIS Form I-9. On December 7, 2016, Ms. Brown invited

Mr. Mushekuru to contact USCIS to see whether that agency would provide documentation indicating that Mr. Mushekuru was authorized to work while his renewal application was being processed. Mr. Mushekuru has not provided such documentation. Mr. Mushekuru notified Ms. Brown that it might be March 2017 before he receives his new work authorization card.

Mr. Oetker allowed Mr. Mushekuru to continue to perform work at Hotel at Kirkwood until December 18, 2016 without the human resources department's knowledge that Mr. Mushekuru had been allowed to work beyond November 20, 2016. Mr. Mushekuru had not performed an work for Kirkwood since December 18, 2016. The employer deems Mr. Mushekuru to be on an approved leave of absence while his application to renew his work authorization is pending. The employer is holding Mr. Mushekuru's position for him and plans to return Mr. Mushekuru as soon as he presents a valid work authorization card.

### **REASONING AND CONCLUSIONS OF LAW:**

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.

USCIS publishes a USCIS Customer Service Reference Guide at his website, [www.uscis.gov](http://www.uscis.gov). Page 9 of the guide includes the following in question and answer format:

Is a receipt showing that the employee has filed for a new employment authorization document acceptable as evidence of continuing eligibility for employment?

The employer may not accept a receipt showing that the employee has filed for an extension or an initial document.

Receipts for applications for employment authorization can only be accepted as evidence of continued eligibility to be employed in cases where the original document has been lost, stolen, or mutilated. In these cases, the previous document must still have been otherwise valid (still would have been within the validity period previously granted if not lost, stolen, etc.) and the employee must provide the valid replacement document within 90 days.

Mr. Mushekuru had the burden of proving that he is able and available for work. To meet the availability requirement, Mr. Mushekuru must prove that he is legally authorized to work in the United States. Because Mr. Mushekuru is still attached to the employment at Kirkwood, he cannot be deemed available for that employment unless and until he provides a valid USCIS work authorization card. Mr. Mushekuru did not participate in the appeal hearing, did not present any evidence, and did not prove that he has been authorized to perform in the United States at any point since November 21, 2016. Because Mr. Mushekuru has not met the availability requirement since he established the claim for unemployment insurance benefits that was effective December 18, 2016, benefits are denied as of that date.

Because the overpayment issue was not included on the hearing notice as an issue to be addressed at the hearing, this matter will be remanded to the Benefits Bureau for entry of an overpayment decision concerning the \$2,296.00 in benefits that Mr. Mushekuru received for the eight-week period of December 18, 2016 through February 11, 2017.

**DECISION:**

The January 19, 2017, reference 02, is reversed. The claimant has not provided proof that he is authorized to perform work in the United States at any point since he filed the unemployment insurance claim that was effective December 18, 2016. Accordingly, the claimant has not been available for work within the meaning of the law since he established the claim that was effective December 18, 2016. Benefits are denied effective December 18, 2016.

This matter is remanded to the Benefits Bureau for entry of an overpayment decision. concerning the \$2,296.00 in benefits that the claimant received for the eight-week period of December 18, 2016 through February 11, 2017.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/rvs