

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

HASSAN DAINKEH
Claimant

APPEAL NO. 17A-UI-07957-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BURKE MARKETING CORPORATION
Employer

OC: 07/09/17
Claimant: Appellant (1)

Iowa Code Section 96.4(4) – Able & Available

STATEMENT OF THE CASE:

Hassan Dainkeh filed a timely appeal from the August 4, 2017, reference 02, decision that denied benefits effective July 9, 2017, based on the claims deputy's conclusion that Mr. Dainkeh had not provided proof that he was authorized to work in the United States and therefore was not available for work within the meaning of the law. After due notice was issued, a hearing was held on August 23, 2017. Mr. Dainkeh participated. Shelli Seibert represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 17A-UI-07956-JTT. Exhibit 1 was received into evidence.

ISSUE:

Whether Mr. Dainkeh has been able to work within the meaning of the law since he established his claim for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Hassan Dainkeh was employed by Burke Marketing Company as a full-time grind room laborer from October 3, 2016 until July 10, 2017, when the employer discharged him from the employment based solely on the expiration of his Work Authorization Card. Mr. Dainkeh is from Sierra Leona, is not a United States Citizen and is required by law to have a valid, current Employment Authorization Card in order to perform work in the United States. The employer is required by law to obtain proof that Mr. Dainkeh is authorized to perform work as a precondition to employing Mr. Dainkeh. On July 10, 2017, Mr. Dainkeh's most recent Work Authorization Card, which had gone into effect July 11, 2016, expired. Mr. Dainkeh knew at the time he obtained the Work Authorization Card that it was only good for a year and would expire on July 10, 2017.

On May 9, 2017, Mr. Dainkeh commenced an approved medical leave of absence in connection with one or more hernias. Before Mr. Dainkeh went off work, the employer reminded Mr. Dainkeh that his Work Authorization Card would expire on July 10, 2017 and that he would

need to renew his Work Authorization Card to continue in the employment beyond July 10, 2017. On May 16 or 17, Mr. Dainkeh underwent two surgical procedures to address his hernia condition. Mr. Dainkeh remained in the hospital for two days and then was discharged to home for a recovery period. While Mr. Dainkeh remained off work, the employer provided Mr. Dainkeh with weekly short-term disability benefits to replace a portion of his wages. Mr. Dainkeh waited until the end of June 2017 to submit his application to renew his work authorization card. Though Mr. Dainkeh was off work on medical leave at that time, he was not incapacitated. In addition, Mr. Dainkeh had the assistance of his significant other. Mr. Dainkeh returned to his regular duties on July 5, 2017. The employer met with Mr. Dainkeh on July 10, 2017 to discharge him from the employment based on his failure to present a valid Work Authorization Card for the period beginning July 11, 2017.

Mr. Dainkeh established a claim for unemployment insurance benefits that was effective July 9, 2017. As of the August 23, 2017 appeal hearing, Mr. Dainkeh had not received a new Work Authorization Card and could not legally work in the United States. While Mr. Dainkeh was waiting for his new Work Authorization Card, he did not look for other employment because he was not authorized to perform work in the United States.

REASONING AND CONCLUSIONS OF LAW:

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".

An individual who is not lawfully authorized to work within the United States will be considered not available for work. Iowa Administrative Code rule 871-24.22(2)(o).

The evidence in the record establishes that Mr. Dainkeh has not been lawfully authorized to work in the United States since he established the unemployment insurance claim that was effective July 9, 2017. For that reason, Mr. Dainkeh is not available for work within the meaning of the law and is not eligible for unemployment insurance benefits. Benefits are denied effective July 9, 2017. The availability disqualification continued at the time of the August 23, 2017 appeal hearing and will continue until Mr. Dainkeh provides proof that he is legally authorized to perform work in the United States. Mr. Dainkeh must meet all other eligibility requirements.

DECISION:

The August 4, 2017, reference 02, decision is affirmed. The claimant has not been lawfully authorized to work in the United States since he established the unemployment insurance claim that was effective July 9, 2017 and therefore is not available for work within the meaning of the law. Benefits are denied effective July 9, 2017. The availability disqualification continued at the time of the August 23, 2017 appeal hearing and will continue until the claimant provides proof

that he is legally authorized to perform work in the United States. The claimant must meet all other eligibility requirements.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs