

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

Appeal Number: 07-IWDUI-039
OC: 01/28/07
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

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.

CESAR GARCIA
501 WEST SEVENTH STREET
STORM LAKE IA 50588-1506

STATE CLEARLY

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

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.

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)

March 30, 2007

(Decision Dated & Mailed)

Section 96.4-3 - Able and Available
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 February 26, 2007, reference 02, which held the claimant ineligible for benefits effective January 28, 2007, because the claimant was not legally authorized to work in the United States.

The hearing was held pursuant to due notice on March 27, 2007, by telephone conference call. The claimant did not participate. Cindy Stroud, Investigator, participated on behalf of Iowa Workforce Development. Department Exhibit One was received as evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness, and having considered all of the evidence in the record, finds that: The claimant filed a claim for unemployment insurance benefits effective January 28, 2007. Since the claimant reported he was not a U.S. citizen the matter was referred to Investigation and Recovery to determine whether he was legally authorized to work in the United States.

Investigator Stroud checked his work authorization with Immigration and Naturalization (INS). INS reported that the claimant's alien registration number matched the name of another individual who was a U.S. citizen, and the social security number he provided matched the name of a different individual.

Investigator Stroud mailed a request to the claimant on February 7, 2007 for him to report for an interview and provide his INS documentation by February 23. The claimant responded by mailing a copy of his employment authorization card that Stroud received on March 2. Stroud submitted the card to INS who responded that it appears to be counterfeit.

The claimant was not available when called for the hearing.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is able and available for work.

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.

The administrative law judge concludes that the claimant was not legally authorized to work in the United States effective January 28, 2007 due to him presenting counterfeit documentation to INS, and he is disqualified from receiving benefits pursuant to the law sections cited above. Although the claimant responded to the hearing notice, he was not available when called for the hearing, and he has failed to establish that has INS credentialed documentation that he is legally authorized to work in the United States.

DECISION:

The decision of the representative dated February 26, 2007, reference 02, is AFFIRMED. The claimant is ineligible for benefits, because he was not able and available for work due to a lack of INS work authorization.

rls