

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MERCEDES TORRES ROMERO
Claimant

APPEAL NO: 15A-UI-01139-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PREMIUM IOWA PORK LLC
Employer

OC: 12/14/14
Claimant: Appellant (4)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Mercedes Torres Romero (claimant) appealed a representative's January 6, 2015 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits because she was not legally authorized to work in the United States. The decision named Premium Iowa Pork, L.L.C. (employer) as an interested party. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 19, 2015. This appeal was consolidated for hearing with three related appeals, 15A-UI-01509-DT, 15A-UI-02354-DT, and 15A-UI-02355-DT. The parties waived formal notice of hearing so that all issues regarding the claimant's availability for work as well as her separation from employment could be considered and resolved in the hearing. The claimant participated in the hearing. Lance Haugstad appeared on the employer's behalf. Olga Esparza served as interpreter. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant is a permanent resident of the United States. She had a valid Employment Authorization Card ("Green Card"), but that card expired on November 3, 2014, despite the fact that the claimant had made an application for renewal of the authorization on August 1, 2014, the earliest she could make her application for renewal.

Because her registration had expired and she no longer had possession of a current and valid Employment Authorization Card, the employer informed the claimant on November 5, 2014 that she was discharged, but that she could seek to be rehired as a new employee at such point a she might receive her renewal.

The claimant ultimately was issued a new Employment Authorization Card which indicated that it was "valid from" October 14, 2014. However, the claimant did not physically receive the new card until on or about November 21. She did not present it to the employer because she had already been discharged and did not wish to seek reemployment as a new hire, with the loss of any seniority that she had previously had. She did seek employment elsewhere, eventually successfully.

The administrative law judge notes that another representative's decision was issued on January 7, 2015 (reference 02) (the subject of 15A-UI-01509-DT) which was a one-party decision including only the claimant which also found that the claimant was not eligible for unemployment insurance benefits by not being able and available for work because of not being currently authorized to work in the United States, and that a subsequent decision was issued on February 13, 2014 (reference 05), also a one-party decision including only the claimant, which found that the claimant's employment authorization had been verified and that she was eligible to receive unemployment insurance benefits as of December 14, 2014, the effective date of the claimant's claim for unemployment insurance benefits.

The administrative law judge further notes that there was another representative's decision issued on February 13, 2015 (reference 04) which addressed the separation from employment between the parties, which is now the subject of the concurrently issued decision in 15A-UI-02355-DT.

REASONING AND CONCLUSIONS OF LAW:

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, be available for work, and be earnestly and actively seeking work. Iowa Code § 96.4-3. "An individual who is not lawfully authorized to work within the United States will be considered not available for work." Rule 871 IAC 24.22(2)"o." In order to be allowed to work, the employee must be able to physically present the copy of the Work Authorization Card to the employer.

Even though the claimant may not have been at fault for the fact that her Employment Authorization Card expired before her renewal application was approved, the mere fact that she had an application for renewal pending is not sufficient to conclude that she was authorized to work. The claimant is now again authorized to work in the United States, and is now again able and available for work, but that status only occurred when she physically received her new Employment Authorization Card on November 21, 2014.

Since the claimant did not seek unemployment insurance benefits until after she physically received her card, there is no period of ineligibility between the effective date of her claim and the date she became eligible by physically possessing her card.

The administrative law judge further notes that there was another representative's decision issued on February 12, 2015 (reference 03) which purportedly concluded that the reference 01 decision "issued on January 5, 2015" (actually January 6, 2015) was null and void. However, the ten-day period after the issuance of the decision had already passed, and the Agency lacked the jurisdiction to negate its decision. Iowa Code § 96.6-2. Therefore, the attempt to rule the reference 01 decision null and void is itself null and void. Further, in fact there is a bona fide issue as to the claimant's eligibility by being able and available for work by physical

possession of the Work Authorization Card which should involve the employer as an interested party which did need to be addressed, which it was through the issuance of the reference 01 decision, now as amended by this decision. As a result, a virtual duplicate of this decision is concurrently issued under 15A-UI-02354-DT regarding the reference 03 decision.

DECISION:

The representative's January 6, 2015 decision (reference 01) is modified in favor of the claimant. The claimant is able to work and available for work effective November 21, 2014. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible. The claimant was not able and available for work as being authorized to work for the period between November 5 and November 21 because she did not physically possess her Employment Authorization Card, but because she did not seek benefits during that period, the issue of her eligibility during that period is moot. Effective December 14, 2014, benefits are allowed, if the claimant is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs