

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MIGUEL TOJIN
Claimant

APPEAL NO: 14A-UI-11188-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC
Employer

OC: 10/19/14
Claimant: Appellant (4/R)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Miguel Tojin (claimant) appealed a representative's October 29, 2014 (reference 01) decision that concluded he was not qualified to receive unemployment insurance benefits because he was not legally authorized to work in the United States. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 19, 2014. This appeal was consolidated for hearing with related Appeal No. 14A-UI-11189-DT. The claimant participated in the hearing. David Rodriguez appeared on the employer's behalf. Rafael Geronimo served as interpreter. During the hearing, Exhibit A-1 and Claimant's Exhibit A were entered into evidence. 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. He had a valid Employment Authorization Card ("Green Card"), but that card expired on October 6, 2014 despite the fact that the claimant had made an application for renewal of the authorization. He had an appointment to review his application with the United States Citizenship and Immigration Services division of the Department of Homeland Security on August 26.

Because his application had expired and he no longer had possession of a current and valid Employment Authorization Card, the employer placed the claimant off work as of October 6. The claimant had had an existing claim for unemployment insurance benefits effective October 20, 2013 which he reopened with an additional claim effective October 5, 2014. When the 2013 claim year expired, he established a second claim year effective October 19, 2014.

The claimant ultimately was issued a new Employment Authorization Card which indicated that it was "valid from" October 27, 2014. However, the claimant did not physically receive the new card until on or about November 4; he physically presented it to the employer that day and was allowed to return to work on November 5.

The administrative law judge notes that on November 7, 2014 another representative's decision was issued (reference 02) which acknowledged the claimant was now authorized to work. However, this decision backdated the claimant's eligibility to October 19, 2014. The employer was not named as a party to that decision and was unaware that a decision had been issued which allowed benefits to be paid to the claimant for which the employer could be liable.

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 have been monetarily eligible for benefits, and even though the claimant may not have been at fault for the fact that his Work Authorization Card expired before his renewal application was approved, the mere fact that he had an application for renewal pending is not sufficient to conclude that he 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 he physically received his new Work Authorization Card and was able to present it to the employer on November 4, 2014.

Benefits are allowed as of the benefit week ending November 8, 2014, provided the claimant is otherwise eligible.

The administrative law judge notes that this conclusion effectively also modifies the decision issued by the representative on November 7, 2014 (reference 02) to which the employer was not named as a party, as the effective date of the claimant's eligibility is not October 19 but rather is the week beginning November 2 and ending November 8. Therefore, the claimant received benefits for the benefit weeks ending October 25 and November 1 to which he was not entitled. The matter will be remanded to the Benefits Bureau for modification of the reference 02 decision and for a determination regarding any resulting overpayment of benefits.

DECISION:

The representative's October 29, 2014 (reference 01) decision is modified in favor of the claimant. The claimant is able to work and available for work effective the week beginning November 2, 2014. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The claimant was not able and available for work as being authorized to work for the benefit weeks ending October 25 and November 1, 2014. The representative's decision issued on November 7, 2014 (reference 02) must be modified to so reflect this conclusion as well. The matter is **REMANDED** to the Benefits Bureau for action on the reference 02 decision consistent with this decision and to determine any resulting overpayment of benefits which may have occurred.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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