

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIA S BUENROSTRO DE G
Claimant

APPEAL NO. 07A-UI-05259-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOHN MORRELL & CO
Employer

**OC: 04/22/07 R: 01
Claimant: Appellant (1)**

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated May 17, 2007, reference 01, which held the claimant ineligible to receive unemployment insurance benefits. After due notice was issued, a telephone conference hearing was held on June 11, 2007. The claimant participated. Participating as the official interpreter was Mr. Ike Rocha. Exhibit 1 was received into evidence.

ISSUE:

The issue is whether the claimant is able and available for work by having proper authorization to work as an alien in the United States.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed the evidence in the record, the administrative law judge finds: The claimant was employed by John Morrell & Company from June 5, 2006 until February 1, 2007, when she was separated due to lack of proper work authorization as an alien in the United States. The claimant worked as a production worker on a full-time basis and was paid by the hour. Based upon the employer's examination of the claimant's work authorization, it was determined that the claimant was not properly authorized to work in the United States and was discharged from employment. Ms. Buenrostro De G utilized an initial work authorization card reported to be issued by the U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, stating the card was valid from 08/11/05 and expiring 02/01/07. The claimant possess a second employment authorization card reported to be issued by the U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, stating the card was valid from 03/27/07 and expiring 03/26/08. It is the claimant's position that although she did not have work authorization between February 2, 2007 and March 27, 2007, both cards were issued by the proper governmental authority and show valid work authorization for an alien to work in the United States for the time period stated.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes, based upon the evidence in the record, that the claimant was separated from John Morrell & Company when a document the claimant supplied and reported to be a work authorization showed the authorization to expire on February 1, 2007. Under law, aliens are required to have valid work authorization to perform services in the United States. Failure

to provide or possess that documentation makes a claimant ineligible for unemployment insurance benefits.

Ms. Buenrostro De G testified under oath that both authorization cards (see Exhibit 1) were valid and that she should not be denied unemployment insurance benefits.

The administrative law judge notes numerous inconsistencies in the initial card reported to be valid from 08/11/05 through 02/01/07 and the card reported to be valid from 03/27/07 through 03/26/08. It is noted that the initial card is reported to be valid for a period in excess of 12 months and notes significant differences in the identification of the claimant on the cards. (see Exhibit 1).

Iowa Code section 96.5-10 provides:

10. Aliens—disqualified. For services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for the purpose of performing such services, or was permanently residing in the United States under color of law at the time such services were performed, including an alien who is lawfully present in the United States as a result of the application of the provisions of section 212(d)(5) of the Immigration and Nationality Act. Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits. In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of the individual's alien status shall be made except upon a preponderance of the evidence.

For the reasons stated herein, the administrative law judge finds that the claimant is disqualified from receiving benefits based upon the claimant's failure to establish that she was lawfully present for the purpose of performing services under color of law at the times that services were performed. The administrative law judge finds that the claimant has not established by a preponderance of the evidence that the work authorization cards utilized by the claimant were lawfully issued for the periods stated and/or to the individual possessing the cards. The claimant is therefore not able and available for work as required by Iowa law and is disqualified from receiving unemployment insurance benefits effective February 8, 2007.

DECISION:

The representative's decision dated May 17, 2007, reference 01, is hereby affirmed. The claimant is not able and available for work based upon the claimant's failure to have valid authorization to work as an alien in the United States. Benefits are denied effective February 8, 2007.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

tpn/kjw

