

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

Appeal Number: 08-IWDUI-146
OC: 07/06/08
Claimant: Appellant (6)

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 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.

JOSE GUTIERREZ
408 N MAIN STREET #205
KIESTER MN 56051-9780

STATE CLEARLY

IOWA WORKFORCE DEVELOPMENT
INVESTIGATION AND RECOVERY
1000 EAST GRAND AVENUE
DES MOINES IA 50319-0209

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)

October 28, 2008

(Decision Dated & Mailed)

871IAC26.11 – Motion to Dismiss Appeal

STATEMENT OF THE CASE:

The claimant appealed a representative's decision dated August 14, 2008, reference 01 that he was not legally authorized to work in the United States, did not meet the availability requirements of the law, and he was disqualified from receiving benefits effective August 3, 2008.

After a telephone hearing on September 15, 2008, the department decision was affirmed, but the claimant appealed and the Employment Appeal Board remanded this matter on October 13, 2008, for a new hearing. Prior to the re-scheduled November 3rd hearing, Investigator Stroud requested to dismiss the appeal due to corrective action that made the claimant eligible for benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds that: The claimant appealed a department decision that disqualified him from receiving unemployment benefits dated March 23, 2004, reference 01. The claimant's employer, Case Ready Meats, had protested the claimant's claim for unemployment benefits, and a representative of the Workforce Service Center conducted a fact-finding interview that resulted in the issuance of the disqualification decision.

After receiving the notice for hearing, Investigator Stroud faxed a motion to dismiss this appeal and remand it to Unemployment Appeals who has jurisdiction to hear and determine the claimant's appeal, as to what may be a separation from employment issue.

The department is not a party and/or party in interest that is requesting to participate in this matter. Investigator Stroud requests that this matter be remanded to Unemployment Appeals for the purposes of scheduling an appeal hearing.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the department's motion to dismiss this appeal should be approved.

871 IAC 26.11 provides:

- (1) No technical form for motions is required. Nevertheless, pre-hearing motions must be in writing, state the grounds for relief and state the relief sought.

The administrative law judge has reviewed the records and files herein and concludes that the motion to dismiss this appeal should be approved. The department has taken favorable action on the claimant's appeal by issuing a new decision that makes him eligible for benefits. Since there is no further issue to decide in this matter, the November 3rd hearing is canceled.

DECISION:

The decision of Iowa Workforce Development dated August 14, 2008, reference 04, is SET ASIDE, and it is superseded by the department decision dated October 23, 2008, reference 02 that is controlling in this matter. The claimant is eligible for benefits, and the telephone hearing scheduled for November 3, 2008, is CANCELED. This appeal is dismissed.

rls