

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PAULA LOPEZ CASTILLO
Claimant

APPEAL 18A-UI-06148-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 04/08/18
Claimant: Appellant (2)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.5(10) – Aliens – Disqualified
Iowa Admin. Code r. 871-24.60(2) – Alien
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

Paula Lopez Castillo (claimant) filed an appeal from the May 7, 2018, reference 01, unemployment insurance decision that denied benefits based upon failure to provide proof of citizenship or legal authorization to work in the United States. After due notice was issued, a telephone conference hearing began on June 20, 2018 and the record was held open until June 22, 2018 at 4:30 p.m. to allow the claimant additional time to submit her evidence. The claimant participated. Spanish interpretation was provided by Claudio (employee number 6347) from CTS Language Link. The claimant's Exhibit A and department's Exhibits D1 through D3 were admitted.

ISSUES:

Is the appeal timely?

Is the claimant a citizen or legally authorized to work in the United States?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is not a citizen, but is legally authorized to work in the United States. She has presented a copy of her Social Security card and Employment Authorization card valid April 9, 2018 through September 9, 2019. (Exhibit A)

The unemployment insurance decision was mailed to the claimant's address of record on May 7, 2018. The decision was written in English with Spanish on the back explaining her appeal rights. The claimant received the decision within ten days but does not speak or read English or read Spanish. The claimant eventually reached out to the Council Bluffs Iowa Works

office on June 5, and the staff put her on notice that she had been disqualified from receiving benefits. The claimant immediately filed an appeal with the assistance of the IWD staff.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant's appeal is timely and the claimant is able to work and available for work. Benefits are allowed.

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The claimant did not have an opportunity to appeal the fact-finder's decision because, while the decision was received, the claimant was unable to read or comprehend the information and did not know she was disqualified. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed an appeal within a reasonable period of time after discovering the disqualification. Therefore, the appeal shall be accepted as timely.

Iowa Code section 96.5(10) provides:

Causes for disqualification. An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.60(2)a-c provides:

Alien. Any person who is not a citizen or a national of the United States. A national is defined as a person who lives in mandates or trust territories

administered by the United States and owes permanent allegiance to the United States. An alien is a person owing allegiance to another country or government.

(2) It is required that information designed to identify illegal nonresident aliens shall be requested of all claimants for benefits. This shall be accomplished by asking each claimant at the time the individual establishes a benefit year whether or not the individual is a citizen.

a. If the response is "yes," no further proof is necessary and the claimant's records are to be marked accordingly.

b. If the answer is "no," the claimant shall be requested to present documentary proof of legal residency. Any individual who does not show proof of legal residency at the time it is requested shall be disqualified from receiving benefits until such time as the required proof of the individual's status is brought to the local office. The principal documents showing legal entry for permanent residency are the Form I-94 "Arrival and Departure Record" and the Forms I-151 and I-551 "Alien Registration Receipt Card." These forms are issued by the immigration and naturalization service and should be accepted unless the proof is clearly faulty or there are reasons to doubt their authenticity. An individual will be required to provide the individual's alien registration number at the time of claim filing.

c. Any or all documents presented to the department by an alien shall be subject to verification with the immigration and naturalization service. The citizenship question shall be included on the initial claim form so that the response will be subject to the provisions of rule 24.56(96), administrative penalties, and rule 871-25.10(96), prosecution on overpayments.

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".

Iowa Admin. Code r. 871-24.22(2)o provides:

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the

type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

o. Lawfully authorized work. An individual who is not lawfully authorized to work within the United States will be considered not available for work.

The claimant is lawfully authorized to work effective April 8, 2018 as she did present the appropriate documentation to the agency on June 22, 2018. Benefits are allowed.

DECISION:

The claimant's appeal is timely. The May 7, 2018, reference 01, unemployment insurance decision is reversed. Benefits are allowed effective April 8, 2018.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/rvs