

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

JOSE R MENCHACA
14153 N STEET
OMAHA NE 68137-1513

ANNA POTTEBAUM INTERPRETER
11601 NW TIMBERIDGE LANE
GRIMES IA 50111

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

DAN ANDERSON, IWD

Appeal Number: 06-IWDUI-179
OC: 07/23/06
Claimant: Appellant (6)

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 written 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.

STATE CLEARLY

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.

(Administrative Law Judge)

September 8, 2006

(Decision Dated & Mailed)

Section 96.4-3 - Able and Available
871 IAC 24.22(2)o – Lawfully Authorized to Work

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development Department decision dated August 9, 2006, reference 02, which held the claimant ineligible for benefits July 23, 2006, because the claimant was not legally authorized to work in the United States.

The hearing was scheduled pursuant to due notice for September 13, 2006, by telephone conference call. Prior to the hearing, Investigator Stroud filed a Motion to Dismiss this matter, and the claimant does not resist.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: The claimant filed a claim for unemployment insurance benefits effective July 23, 2006. The department issued a decision that disqualified the claimant from receiving benefits, as he was not legally authorized to work in the United States. The claimant appealed the decision and this matter was set for hearing. Prior to the hearing, the claimant presented documentation that was confirmed by Investigator Stroud that he was legally authorized to work in the United States. The department issued a new decision dated August 28, 2006, reference 04 that made the claimant eligible for benefits effective July 23, 2006, and a copy was mailed to the claimant.

Stroud filed a Motion to Dismiss this matter dated August 28, 2006, as the department had removed the disqualifying issue by the issuance of a new decision, and there is no further matter to be determined in this case.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is able and available for work.

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".

871 IAC 24.22(96) Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) *Able to work.* An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

(2) *Available for work*

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

The administrative law judge concludes that the claimant is eligible to receive benefits by reason of the department decision dated August 28, 2006, reference 04, as it removes the disqualifying issue. The department's Motion to Dismiss is granted, as there is no further issue to be determined, and the September 13, 2006 hearing is canceled. The claimant is entitled to receive benefits, provided he is otherwise eligible.

DECISION:

The decision of the representative dated August 9, 2006, reference 02, 2006, is SET ASIDE. The claimant is able and available for benefits effective July 23, 2006 by reason of the department decision dated August 28, 2006, reference 04. The claimant is entitled to receive benefits, provided he is otherwise eligible.

rls