

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

**Appeal Number:** 10-IWDUI-118  
**OC:** 03/14/10  
**Claimant:** Appellant (2)

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, 4<sup>TH</sup> 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.

**MANUEL E. BALDERAS**  
**PO BOX 94**  
**JEWELL, IA 50130-0094**

STATE CLEARLY

**IOWA WORKFORCE DEVELOPMENT  
INVESTIGATION AND RECOVERY  
1000 EAST GRAND AVENEUE  
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

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(Administrative Law Judge)

April 28, 2010

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(Decision Dated & Mailed)

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Iowa Code section 96.4-3 – Able and available to work

### STATEMENT OF THE CASE

Manuel Bladeras appealed a representative's decision dated April 5, 2010, reference 01, which held he was not eligible to receive unemployment insurance benefits because he failed to provide proof that he is a citizen or legally authorized to work in the United States.

A telephone hearing was scheduled for April 27 2010. Notice was sent to all parties. Appellant Manuel Balderas appeared and participated on his own behalf. No one appeared to represent Iowa Workforce Development. The documents contained in the administrative file were admitted into evidence.

### **FINDINGS OF FACT**

Manuel Balderas applied for unemployment insurance benefits effective March 14, 2010. On March 19, 2010, Investigator Mary Piagentini sent Balderas a *Notice to Report*. The document stated that, in order to be eligible for unemployment benefits, Balderas needed to send a copy of his INS Work Authorization card, I-94, or other INS identification to Ms. Piagentini on or before March 29, 2010. The notice was mailed to Balderas at his current address and he received the same.

Within a few days of receipt of the notice and before the March 29, 2010 deadline, Balderas took his Resident Alien card, Iowa Non-Driver I.D. card and Social Security card to the local Workforce Development office in Ames, Iowa and allowed them to make copies of the same. Balderas was informed by the Ames office personnel that his documentation would be forwarded on to Ms. Piagentini.

According to a *Statement of Fact/Decision Worksheet* submitted by Workforce Development, Piagentini did not receive any documentation by March 29, 2010. Therefore, on April 5, 2010, Piagentini caused the decision holding Balderas ineligible to receive benefits to be issued.

When Balderas received the ineligibility decision he returned to the Ames Workforce Development office with his documentation. Copies were made a second time and Balderas waited in the office while the copies were sent by facsimile to the department's Appeals Section.

### **CONCLUSIONS OF LAW**

To be eligible to receive unemployment benefits, an unemployed individual must be able and available for work, and must be earnestly and actively seeking work.<sup>1</sup> An alien is disqualified from receiving benefits unless the individual was lawfully admitted for permanent residence at the time the services were performed, was lawfully present for the purpose of performing the services, or was permanently residing in the United States under color of law at the time the services were performed.<sup>2</sup> Under Workforce Development's rules, "[a]n individual who is not lawfully authorized to work within the United States will be considered not available to work"<sup>3</sup>

Workforce Development must ask each claimant at the time the claimant establishes a benefit year whether or not the claimant is a citizen.<sup>4</sup> If the claimant answers "yes," no

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<sup>1</sup> *Id.* § 96.4(3).

<sup>2</sup> *Id.* § 96.5(10).

<sup>3</sup> 871 IAC 42.22(2)*o.*

<sup>4</sup> *Id.* 24.60(2).

further proof is necessary and the claimant's records are marked accordingly.<sup>5</sup> If the claimant answers "no," IWD shall request that the claimant produce documentary proof of legal residency.<sup>6</sup> "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."<sup>7</sup> Under IWD's rules, "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."<sup>8</sup>

Here, upon receiving the request to provide proof of his authorization to work in the United States, Balderas immediately complied by taking his documents to the Ames office. By doing so Balderas complied with the rules promulgated by Workforce Development. Therefore, the decision holding him ineligible to receive benefits must be reversed.

### DECISION

The decision of Iowa Workforce Development dated April 5, 2010, reference 01, holding Manuel Balderas ineligible to receive unemployment insurance benefits because he failed to provide proof he is legally authorized to work in the United States is **REVERSED**. The department shall take all steps necessary to implement this decision.

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<sup>5</sup> *Id.* 24.60(2)a.

<sup>6</sup> *Id.* 24.60(2)b.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* 24.60(2)c.