

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

Appeal Number: 10-IWDUI-040-1
OC: 01/26/10
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

KHONE SAYPASUET
812 ½ 17th Street
SIOUX CITY, IA 51105

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

DAN ANDERSON, IWD

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.

Jean M. Davis

(Administrative Law Judge)

February 26, 2010

(Dated and Mailed)

Iowa Code Section 96.4-3 – Able and Available for Work
Iowa Code Section 96.3-7 – Recovery of Overpayments

STATEMENT OF THE CASE:

Khone Saypasuet filed an appeal from a decision issued by Iowa Workforce Development on January 12, 2010, reference 01, holding that Mr. Saypasuet was not eligible to receive unemployment benefits because he failed to provide proof he was legally authorized to work in the United States. Therefore, the department denied benefits effective December 28, 2009. A second decision was issued by the

department on January 26, 2010, reference 02, holding that Mr. Saypasuet was eligible for unemployment compensation benefits effective January 25, 2010 based upon documentation supplied by Mr. Saypasuet which established that he was authorized to work in the United States.

The appeal in this case was certified from Iowa Workforce Development to the Iowa Department of Inspections and Appeals on February 5, 2010 for purposes of conducting a contested case hearing. As certified by Iowa Workforce Development, the appeal issues were listed as able and available for work and overpayment of benefits. A notice of hearing on both issues was issued on February 8, 2010.

A telephone hearing was scheduled for and held on February 15, 2010. Mr. Saypasuet did not appear for the hearing. Investigator Mary Piagentini appeared on behalf of the department. The documents contained in the file for each appeal were also admitted into the record. In addition, Ms. Piagentini stipulated that the overpayment of benefits issue had been incorrectly certified and further stipulated that there was no overpayment of benefits on the account. Based upon the Department's stipulation, the overpayment of benefits issue is dismissed as incorrectly certified.

FINDINGS OF FACT:

Khone Saypasuet originally filed a claim for unemployment benefits effective December 6 2009. On his application he noted that he was not a citizen of the United States but he did not provide an alien number. Therefore, the matter was referred to Mary Piagentini to investigate.

On December 21, 2009, Ms. Piagentini sent Mr. Saypasuet a notice asking that he provide proof of his status by December 31, 2009. The notice stated:

**THIS NOTICE IS AN OFFICAL REQUEST FOR A COPY OF YOUR
IMMIGRATION & NATURALIZATION I-94, EMPLOYMENT
AUTHORIZATION OR RESIDENT ALIEN CARD.**

(Bold and capital emphasis in original).

Mr. Saypasuet did not provide the department any documentation by the deadline. Therefore, on December 26, 2009, Ms. Piagentini caused a decision to be issued disqualifying Mr. Saypasuet for unemployment insurance benefits effective December 28, 2009, for failing to provide proof he was authorized to work in the United States.

Mr. Saypasuet filed an appeal from that decision and provided subsequently a copy of the front of his Permanent Resident Card along with the appeal. Benefits were subsequently awarded to Mr. Saypasuet based upon the documentation he submitted however the effective date of his eligibility was determined to be January 25, 2010.

REASONING AND CONCLUSIONS OF LAW:

Iowa law requires that, in order to be eligible for unemployment benefits, an individual must be able and available for work.¹ The department has promulgated rules providing for a non-United States citizen to provide proof that he or she is authorized to work in the United States and is, therefore, able and available to work.² Those rules note that Section 3304(a)(14) of the Federal Unemployment Tax Act requires that state law deny benefits which are based on services performed by an alien who has not been legally admitted to the country as a permanent resident.³ The rules further provide:

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.

* * *

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.

* * *

(Emphasis supplied).

Here, when Mr. Saypasuet applied for benefits, he answered “no” to the question whether he was a citizen of the United States. The department then requested proof of his status and gave him ten days to respond. Mr. Saypasuet failed to provide the requested documentation within the allotted time and the department, according to its rules, disqualified him from receiving benefits until such time as he did provide a copy of his Permanent Resident Card.

The Department's decision disqualifying Khone Saypasuet for unemployment benefits effective December 28, 2009 must be upheld. The subsequent decision awarding benefits to Mr. Saypasuet effective January 25, 2010 was based upon documentation

¹ Iowa Code section 96.4-3.

² 871 IAC 24.60.

³ 871 IAC 24.60(1).

supplied after the request made by Ms. Piagentini. Ms. Piagentini's decision was correct based upon Mr. Saypasuet's failure to provide her with documentation on or before December 31, 2009.

DECISION:

The decision of Iowa Workforce Development dated December 6, 2009, reference 01, is AFFIRMED.

jmd