

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

**Appeal Number:** 10-IWDUI-024  
**OC:** 11/22/09  
**Claimant:** Appellant (1)

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.

**OMAR O. GARGAR**  
**327 MEMORIAL DR., #306**  
**SIOUX CITY, IA 51031**

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

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(Administrative Law Judge)

April 15, 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

Omar Gargar appealed a representative's decision dated December 28, 2009, reference 01, which held Gargar was not eligible to receive unemployment insurance benefits because he failed to provide proof he is a citizen or legally authorized to work in the United States.

A telephone hearing was scheduled for April 15, 2010. Workforce Development Investigator Mary Piagentini appeared and represented Iowa Workforce Development. Omar Gargar failed to appear. Ms. Piagenini elected to rest the agency's case on the documents contained in the administrative record.

### FINDINGS OF FACT

Omar O. Gargar applied for unemployment insurance benefits effective November 22, 2009. On November 30, 2009, Investigator Mary Piagentini sent Gargar a *Notice to Report*. The document stated that, in order to be eligible for unemployment benefits, Gargar needed to send a copy of his INS Work Authorization card, I-94, or other INS identification to Ms. Piagentini on or before December 14, 2009.

When she did not receive the requested proof of authorization to work in the United States by the deadline, Piagentini caused a decision to be issued on December 28, 2009, holding that Gargar was ineligible for benefits as of December 14, 2009 and continuing until proof of authorization to work in the United States was provided.

Gargar filed this appeal on January 5, 2010. Along with the appeal, he provided a copy of his work authorization documentation.

### 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 IWD'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>

IWD 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 further proof is necessary and the claimant's records are marked accordingly.<sup>5</sup> If the claimant answers "no," IWD shall request 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>

Here, IWD requested proof of Gargar's status to be provided by December 14, 2009.

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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).

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

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

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

Gargar failed to provide the proof and the agency issued its decision holding he was ineligible to receive benefits effective December 14, 2009 until such time as he would provide the requested documentation. Gargar provided proof of his legal authority to work in the United States with his appeal on January 5, 2010.

Under these circumstances the decision holding Omar Gargar ineligible to receive benefits until he provided the appropriate documents should be affirmed.

**DECISION**

The decision of Iowa Workforce Development dated December 28, 2009, reference 01, holding Omar O. Gargar ineligible to receive unemployment insurance benefits because he failed to provide proof he is legally authorized to work in the United States is **AFFIRMED**. Workforce Development shall take any steps necessary to implement this decision.

kka