

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

RAFAEL M OCAMPO
310 PLEASANTVIEW RD
MARSHALLTOWN IA 50158

AGRIPROCESSORS INC
PO BOX 920
POSTVILLE IA 52162-0920

Appeal Number: 05A-UI-01086-DT
OC: 01/09/05 R: 02
Claimant: Appellant (2)

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 Workforce Development. 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)

(Decision Dated & Mailed)

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

Rafael M. Ocampo (claimant) appealed a representative's January 31, 2005 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits for the week ending January 15, 2005 because of an availability issue in connection with employment with Agriprocessors, Inc. (employer). Hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing to be held on February 17, 2005. This appeal was consolidated for hearing with three related appeals, 05A-UI-01087-DT, 05A-UI-01088-DT, and 05A-UI-01089-DT. Prior to the hearing being held, the administrative law judge determined that no hearing was necessary and a decision was made on the record. Based on a review of the information in the administrative file and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

FINDINGS OF FACT:

The claimant resides in Marshalltown, Iowa and has been employed by a local Marshalltown employer. Agriprocessors, Inc. facility is in Postville, Iowa, a drive of several hours from Marshalltown.

On February 15, 2005, a new representative's decision (reference 05) was issued that concluded that another individual who worked at Agriprocessors, Inc. had been fraudulently using the claimant's identification. The claimant himself had never worked at Agriprocessors, Inc. The new representative's decision further stated that wage credits on the claimant's wage history reported by Agriprocessors, Inc. as having been paid to the claimant were removed.

There has been no issue raised as to the claimant's eligibility for unemployment insurance benefits in connection with his actual Marshalltown employer.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is currently eligible for unemployment insurance benefits by being able and available for employment.

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".

The claimant is able and available for work. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's January 31, 2005 decision (reference 01) is reversed. The claimant is able to work and available for work effective January 9, 2005. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

ld/sc