

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WINSTON P RICHARDSON
Claimant

APPEAL 17A-UI-02101-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 05/22/16
Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 15, 2017, (reference 04) unemployment insurance decision that denied benefits based upon failure to provide proof of citizenship or legal authorization to work in the United States. The parties were properly notified of the hearing. A telephone hearing was held on March 16, 2017. The claimant participated and testified. Claimant's Exhibit A was received into evidence.

ISSUE:

Is the claimant a citizen or legally authorized to work in the United States?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is not a citizen, but is legally authorized to work in the United States. He has presented copies of his Form I-551 for the time in question. Claimant has provided an I-551 authorizing him to work from June 8, 2015 through June 7, 2016, and one from June 23, 2016 through June 22, 2017. Claimant recently had a meeting with U.S. Customs and Immigration Services, in which it was determined that his most recent application for continued legal status would not be approved prior to the June 22 expiration of his I-551, so a new I-551 was issued. The new I-551 gives claimant work authorization from February 28, 2017 through February 27, 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work.

Iowa Code § 96.5(10) provides:

An individual shall be disqualified for benefits:

10. Aliens—disqualified. For services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for the purpose of performing such services, or was permanently residing in the United States under color of law at the time such services were performed, including an alien who is lawfully present in the United States as a result of the application of the provisions of section 212(d)(5) of the Immigration and Nationality Act. Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits. In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of the individual's alien status shall be made except upon a preponderance of the evidence.

Iowa Admin. Code r. 871-24.60(2)a-c provides:

Alien. Any person who is not a citizen or a national of the United States. A national is defined as a person who lives in mandates or trust territories administered by the United States and owes permanent allegiance to the United States. An alien is a person owing allegiance to another country or government.

(2) 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.

a. If the response is "yes," no further proof is necessary and the claimant's records are to be marked accordingly.

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.

c. Any or all documents presented to the department by an alien shall be subject to verification with the immigration and naturalization service. 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.

Iowa Code § 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".

Claimant is lawfully authorized to work. He has presented the appropriate documentation to the agency. The documentation shows claimant was authorize to work from May 22, 2016 until June 7, 2016, when his work authorization expired. Claimant's work authorization was renewed beginning June 23, 2016 and is current through February 27, 2018. Based on the information provided, it appears claimant was not authorized to work from June 8 through June 22, 2016, and therefore did not meet the requirements for benefits during that approximately two-week time frame.

DECISION:

The February 15, 2017, (reference 04) unemployment insurance decision is reversed. Benefits are allowed effective May 22, 2016 through June 7, 2016 and from June 23, 2016 forward. Claimant was ineligible for benefits from June 8 through June 22, 2016.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

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