

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRANDON FARROW
Claimant

APPEAL 21A-UI-23745-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 01/10/21
Claimant: Appellant (1)**

Iowa Code § 96.6(2) - Timeliness of Appeal
Iowa Code § 96.3(5)b – Training Extension Benefits
Iowa Admin. Code r. 871-24.40 Training Extension Benefits

STATEMENT OF THE CASE:

Claimant appealed the August 26, 2021, (reference 04) unemployment insurance decision that denied training extension benefits. After due notice was issued, a telephone hearing was held on December 15, 2021. The claimant participated. Claimant's Exhibits A and B were received. The administrative law judge took official notice of the administrative record, including fact-finding documents.

ISSUES:

Is the appeal timely?
Is the claimant eligible to receive training extension benefits (TEB)?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was involuntarily separated from full-time employment as a customer service associate. Claimant resides in Region 11.¹ He filed a claim for benefits with an effective date of January 10, 2021. He has exhausted all benefit payments on regular and extension unemployment insurance benefits. The application for TEB was submitted before the end of the benefit year. In August 2021, he started school at Des Moines Area Community College (DMACC) to receive a degree in business administration and expects to complete that training in the fall of 2022 or 2023. Claimant's area of study is not for an occupation that is considered to be a high-demand occupation (HDO) as defined by Iowa Workforce Development (IWD) in Region 11 or a high-tech occupation or training approved under the Workforce Investment Act (WIA).²

¹ See <https://www.iowaworkforcedevelopment.gov/regional-profiles> (last accessed December 16, 2021).

² See <https://www.iowaworkforcedevelopment.gov/2012-2022-high-demand-and-high-growth-occupations> (last accessed December 16, 2021).

On August 26, 2021, Iowa Workforce Development mailed a reference 04 unemployment insurance decision denying Training Extension Benefits (TEB) to claimant's last address of record. The decision warned that an appeal was due by September 5, 2021. Claimant received the decision within the appeal period. Claimant had previously received a decision allowing him Department Approved Training (DAT). In conversations claimant had with the employees at IWD, he was led to believe that these were the same programs, and he would therefore disregard the decision that denied TEB as he had already been approved. In a later conversation with an IWD representative, claimant learned TEB was not the same program and he needed to file an appeal. Claimant promptly filed an appeal of the disqualifying decision on October 24, 2021.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether claimant's appeal is timely. For the reasons that follow, the administrative law judge concludes that it is.

Iowa Code section 96.6(2) provides:

2. *Initial determination.* A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the appellant did not have a reasonable opportunity to file a timely appeal.

Claimant's failure to file an appeal within the appeal period was solely because of incorrect information received from an IWD representative. He found out about the misinformation when communicating with Iowa Workforce Development. He promptly filed an appeal. This delay was prompted by and perpetuated by the agency. See, Iowa Admin. Code r. 871-24.35(2). Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant is eligible to receive training extension benefits. For the reasons that follow the administrative law judge concludes the claimant is not eligible.

Iowa Code section 96.3(5)a-b provides:

a. Duration of benefits. The maximum total amount of benefits payable to an eligible individual during a benefit year shall not exceed the total of the wage credits accrued to the individual's account during the individual's base period, or twenty-six times the individual's weekly benefit amount, whichever is the lesser. The director shall maintain a separate account for each individual who earns wages in insured work. The director shall compute wage credits for each individual by crediting the individual's account with one-third of the wages for insured work paid to the individual during the individual's base period. However, the director shall recompute wage credits for an individual who is laid off due to the individual's employer going out of business at the factory, establishment, or other premises at which the individual was last employed, by crediting the individual's account with one-half, instead of one-third, of the wages for insured work paid to the individual during the individual's base period. Benefits paid to an eligible individual shall be charged against the base period wage credits in the individual's account which have not been previously charged, in the inverse chronological order as the wages on which the wage credits are based were paid. However if the state "off" indicator is in effect and if the individual is laid off due to the individual's employer going out of business at the factory, establishment, or other premises at which the individual was last employed, the maximum benefits payable shall be extended to thirty-nine times the individual's weekly benefit amount, but not to exceed the total of the wage credits accrued to the individual's account.

b. Training Extension Benefits.

(1) An individual who has been separated from a declining occupation or who has been involuntarily separated from employment as a result of a

permanent reduction of operations at the last place of employment and who is in training with the approval of the director or in a job training program pursuant to the Workforce Investment Act of 1998, Pub. L. No. 105-220, at the time regular benefits are exhausted, may be eligible for training extension benefits.

(2) A declining occupation is one in which there is a lack of sufficient current demand in the individual's labor market area for the occupational skills for which the individual is fitted by training and experience or current physical or mental capacity, and the lack of employment opportunities is expected to continue for an extended period of time, or the individual's occupation is one for which there is a seasonal variation in demand in the labor market and the individual has no other skill for which there is current demand.

(3) The training extension benefit amount shall be twenty-six times the individual's weekly benefit amount and the weekly benefit amount shall be equal to the individual's weekly benefit amount for the claim in which benefits were exhausted while in training.

(4) An individual who is receiving training extension benefits shall not be denied benefits due to application of section 96.4, subsection 3, or section 96.5, subsection 3. However, an employer's account shall not be charged with benefits so paid. Relief of charges under this paragraph "b" applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(5) In order for the individual to be eligible for training extension benefits, all of the following criteria must be met:

(a) The training must be for a high-demand occupation or high-technology occupation, including the fields of life sciences, advanced manufacturing, biotechnology, alternative fuels, insurance, and environmental technology. "High-demand occupation" means an occupation in a labor market area in which the department determines work opportunities are available and there is a lack of qualified applicants.

(b) The individual must file any unemployment insurance claim to which the individual becomes entitled under state or federal law, and must draw any unemployment insurance benefits on that claim until the claim has expired or has been exhausted, in order to maintain the individual's eligibility under this paragraph "b". Training extension benefits end upon completion of the training even though a portion of the training extension benefit amount may remain.

(c) The individual must be enrolled and making satisfactory progress to complete the training.

Iowa Admin. Code r. 871-24.40 provides:

Training extension benefits.

(1) The purpose of training extension benefits is to provide the individual with continued eligibility for benefits so that the individual may pursue a training program for entry into a high-demand or high-technology occupation. **Training**

extension benefits are available to an individual who was laid off or voluntarily quit with good cause attributable to the individual's employer from full-time employment in a declining occupation or is involuntarily separated from full-time employment as a result of a permanent reduction of operations.

(2) The weekly benefit amount shall be pursuant to the same terms and conditions as regular unemployment benefits and the benefits shall be for a maximum of 26 times the weekly benefit amount of the claim which resulted in eligibility. Both contributory and reimbursable employers shall be relieved of charges for training extension benefits.

(3) The course or courses must be full-time enrollment for a high-demand or high-technology occupation. The department will make available to serve as a guide a list of high-demand, high-technology, and declining occupations. The lists shall be available on the department's Web site and workforce centers.

a. High-technology occupations include life sciences, advanced manufacturing, biotechnology, alternative fuels, insurance, environmental technology, and technologically advanced green jobs. A high-technology occupation is one which requires a high degree of training in the sciences, engineering, or other advanced learning area and has work opportunities available in the labor market area or the state of Iowa.

b. A high-demand occupation means an occupation in a labor market area or the state of Iowa as a whole in which the department determines that work opportunities are available.

c. A declining occupation has a lack of sufficient current demand in the individual's labor market area or the state of Iowa for the occupational skills possessed by the individual, and the lack of employment opportunities is expected to continue for an extended period of time.

d. A declining occupation includes an occupation for which there is a seasonal variation in demand in the labor market or the state of Iowa, and the individual has no other skill for which there is a current demand.

e. A declining or high-demand occupation will be determined by using Iowa labor market information for each region in the state.

(4) The application for training benefits must be received within 30 days after state or federal benefits are exhausted. The individual must be enrolled and making satisfactory progress to complete the training program in order to continue to be eligible for training extension benefits.

(5) Training benefits shall cease to be available if the training is completed; the individual quits the training course; the individual exhausts the training extension maximum benefit amount; or the individual fails to make satisfactory progress; and benefits shall cease no later than the end of the benefit year in which the individual became eligible for the benefits. Individuals must file and receive benefits under any federal or state unemployment insurance benefit program

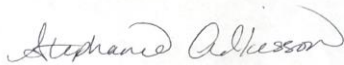
until the benefits have been exhausted, in order to maintain eligibility for training extension benefits.

This rule is intended to implement 2009 Iowa Code Supplement section 96.3(5).

Claimant does not meet the eligibility requirements for unemployment benefits. As noted in bold in the administrative rule above, in order to be eligible for Training Extension Benefits a claimant must have been separated from the last place of employment as a result of a permanent reduction in operations or because of a voluntary quit from a declining occupation. In this case, claimant was laid off due to a reduction, it was not from a permanent reduction in operations or a declining occupation in Region 11. Therefore, while claimant's desire for additional education is understandable and admirable, training extension benefits must be denied.

DECISION:

The appeal is timely. The August 26, 2021, (reference 04) unemployment insurance decision is affirmed. The claimant is not eligible to receive training extension benefits.



Stephanie Adkisson
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January 19, 2022

Decision Dated and Mailed

sa/abd