

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CARMEN BROWER
Claimant

APPEAL 17A-UI-12344-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 07/09/17
Claimant: Appellant (2R)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.4(6)a – Department Approved Training
Iowa Admin. Code r. 871-24.39 – Department Approved Training

STATEMENT OF THE CASE:

Carmen Brower (claimant) appealed the November 20, 2017, reference 01, unemployment insurance decision that denied department approved training. After due notice was issued, a telephone hearing was held on December 27, 2017. The claimant participated. Department's Exhibits D1 and D2 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 for department approved training?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant filed a claim for benefits effective March 5, 2017. She most recently worked for Lamont as a Vice President of Operations. The claimant was separated from employment with Lamont when she was discharged. During her base period, she was employed with Nestle Purina and Shearers as a Chemical Engineer. Her normal shift was from 7:00 a.m. to 5:30 p.m., Monday through Friday.

On November 20, 2017, the claimant applied for department approved training. Beginning, January 8, 2018, the claimant will be attending school at Purdue University online working toward a Master's of Science and Engineering with a concentration in management and leadership. The graduate classes will require her to be available during normal business hours a minimum of three hours a week for online lecture in real time. She will also be required to take eight exams during the semester and two quizzes per week which require her to go to a proctoring facility that is only open during normal business hours.

The unemployment insurance decision denying department approved training based on her class schedule was mailed to the appellant's address of record on November 20, 2017 and contained a warning that an appeal needed to be filed by November 30, 2017. The appellant did not receive the decision until December 1, 2017. The appeal was sent immediately after receipt of that decision.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is timely and she is eligible to for department approved training.

Iowa Code section 96.6(2) provides, in pertinent part:

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. . . . 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.

The appellant did not have an opportunity to appeal the unemployment insurance decision because the decision was not received in a timely fashion. Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The appellant filed the appeal the same day the decision was received. Therefore, the appeal shall be accepted as timely.

Iowa Code § 96.4(6)a provides:

An otherwise eligible individual shall not be denied benefits for any week because the individual is in training with the approval of the director, nor shall the individual be denied benefits with respect to any week in which the individual is in training with the approval of the director by reason of the application of provision in subsection 3 of this section relating to availability for work, and an active search for work or the provision of section 96.5, subsection 3, relating to failure to apply for or a refusal to accept suitable work. However, an employer's account shall not be charged with benefits so paid.

Iowa Admin. Code r. 871-24.39 provides:

Department-Approved Training or Retraining Program.

The intent of department-approved training is to exempt the individual from the work search requirement for continued eligible for benefits so individuals may pursue training that will upgrade necessary skills in order to return to the labor forces. In order to be eligible for department-approved training programs and to maintain continuing participation therein, the individual shall meet the following requirements:

(1) Any claimant for benefits who desires to receive benefits while attending school for training or retraining purposes shall make a written application to the department setting out the following:

- a. The educational establishment at which the claimant would receive training.
- b. The estimated time required for such training.
- c. The occupation which the training is allowing the claimant to maintain or pursue.

(2) A claimant may receive unemployment insurance while attending a training course approved by the department. While attending the approved training course, the claimant need not be available for work or actively seeking work except if the hours of the training are outside the regular hours worked in the base period employment. After completion of department-approved training the claimant must, in order to continue to be eligible for unemployment insurance, place no restriction on employability. The claimant must be able to work, available for work, and be actively searching for work. In addition, the claimant may be subject to disqualification for any refusal or work without good cause after the claimant has completed the training.

(3) The claimant must show satisfactory attendance and progress in the training course and must demonstrate that such claimant has the necessary finances to complete the training to substantiate the expenditure of unemployment insurance funds.

The claimant meets the eligibility requirements for department approved training because the training requires her to be available during her normal business hours. The claimant will be enrolled effective January 8, 2018 and is eligible for department approved training effective at that time. The claimant does not have to be able to work, available for work, or actively and earnestly seeking work in any week she attends department approved training.

DECISION:

The claimant's appeal is timely. The November 20, 2017, reference 01, unemployment insurance decision is reversed. The claimant is eligible for department approved training and will not be required to be able to work, available for work, or actively and earnestly seeking work in any week she attends training.

REMAND:

As the claimant is eligible for department approved training, the issue of whether she is eligible for training extension benefits under Iowa Code section 96.3(5) is remanded to the Benefits Bureau for an initial investigation and determination.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn