

**IOWA DEPARTMENT OF INSPECTIONS & APPEALS
DIVISION OF ADMINISTRATIVE HEARINGS, UI APPEALS BUREAU**

MORGAN VARGAS
Claimant

APPEAL NO. 23A-UI-05613-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 03/26/23
Claimant: Appellant (1R)**

Iowa Code Section 96.5(3)(b) – Training Extension Benefits

STATEMENT OF THE CASE:

On May 17, 2023, Morgan Vargas (claimant) filed a timely appeal from the May 11, 2023 (reference 05) decision that denied training extension benefits (TEB) effective May 7, 2023, based on the deputy's conclusion the claimant did not meet one or more of the eligibility requirements. After due notice was issued, a hearing was held on June 19, 2023. Claimant participated. Exhibit A, the appeal letter, and Exhibit B, the fall 2023 registration. The administrative law judge took official notice of the following Iowa Workforce Development administrative records: DBRO, NMRO, the reference 01, 02, 03 and 05 decisions, the administrative law judge decision in Appeal Number 23A-UI-04891-DZ-T, the DAT application and TEB application, the IWD published list of declining occupations, and the IWD published list of high demand occupations.

ISSUE:

Whether the claimant is eligible for training extension benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Morgan Vargas (claimant has at all relevant times resided in Clinton, Iowa, which is part of Iowa Workforce Development's Region 9 service area.

The claimant holds a Bachelor of Arts Degree in Psychology. The claimant earned her B.A. in 2016 and worked for a mental health center for five years, until April 2022, at which time she elected to change fields and commenced performing I.T. work.

The claimant was most recently employed by Wild Rose Clinton, L.L.C., a gaming business, as a full-time Information Technology (I.T.) Coordinator. The Wild Rose employment began in April 2022 and ended on March 29, 2023. IWD's list of Region 9 declining occupations does not include any I.T. related occupations.

As of January 2023, the claimant's work hours at Wild Rose were 9:00 a.m. to 5:00 p.m. The claimant chose these work hours because they worked well with evening part-time academic studies at Eastern Iowa Community College.

On March 29, 2023, Wild Rose Clinton, L.L.C. discharged the claimant from the full-time I.T. Coordinator employment. The discharge was not due to a permanent reduction in operations. Iowa Workforce Development determined the claimant was discharged for no disqualifying reason. See the April 17, 2023 (reference 01) decision. The claimant is aware that the employer solicited applications for her former position subsequent to the claimant's discharge.

Morgan Vargas (claimant) established an original claim for benefits that was effective March 26, 2023. Iowa Workforce Development has set the weekly benefit amount at \$402.00 and the maximum benefit amount at \$6,432.00. The claimant has thus far made weekly claims for each of the weeks between April 9, 2023 and June 17, 2023 and has received \$4,056.00 in benefits. The claimant has not exhausted regular unemployment insurance benefits.

The claimant commenced part-time evening academic studies at Eastern Iowa Community College in 2019. The claimant has continued in the part-time evening academic studies. On or about May 15, 2023, the claimant finished the spring 2023 academic term. The claimant identifies her occupational goal as Information Technology Analyst. IWD identifies computer Network & Data Communications Analyst (occupation number 15-1081) as a state-wide high demand occupation. The claimant identifies her academic goal as an associate (A.A./A.S.) degree. During the spring term, the claimant's course schedule consisted of two online classes, for a total of eight credit hours. The claimant could participate in one of the online classes at her convenience. The other class required that the claimant participate from 5:30 p.m. to 9:45 p.m. on Tuesday and Thursday. The claimant's spring 2023 academic schedule fell outside the claimant's established 9:00 a.m. to 5:00 p.m. established full-time work schedule.

On April 27, 2023, the claimant applied for Department Approved Training (DAT) for the period of January 17, 2023 through May 15, 2023.

On May 1, 2023, IWD denied the claimant's application for DAT status. See the May 1, 2023 (reference 04) decision. The claimant filed a timely appeal from the reference 04 decision.

On June 2, 2023, an administrative law judge affirmed the DAT denial. See Appeal Number 23A-UI-04891-DZ-T. The administrative law judge's findings of fact were as follows:

Ms. Vargas filed a claim for benefits effective March 26, 2023. She applied for department-approved training effective April 23, 2023. Ms. Vargas is enrolled as a part-time student at Eastern Iowa Community Colleges – Scott Community College to obtain an associate of science degree in information technology/cybersecurity. She began the program in Fall 2019 and is scheduled to finish the program in Fall 2023. Ms. Vargas has been satisfactorily attending classes and has the necessary finances to complete the training.

Ms. Vargas is not enrolled in classes for summer 2023. Instead, Ms. Vargas has been studying to take the CompTIA A+ exam, which will show her proficiency in the field. The exam is not part of her degree program and is not required to obtain her degree.

Appeal Number 23A-UI-04891-DZ-T, page 1. The administrative law judge concluded as follows:

In this case, Ms. Vargas is not enrolled as a full-time student for the summer 2023 session. Ms. Vargas is doing what is best for her by working toward additional

education. But she does not meet the eligibility requirements for department approved training. Department approved training is denied.

Appeal Number 23A-UI-04891-DZ-T, page 3. IWD decision docketing records reflect that claimant did not appeal the administrative law judge decision denying DAT by the appeal deadline and that the administrative law judge's DAT denial decision has become a final agency decision.

On April 27, 2023, the claimant also applied for Training Extension Benefits (TEB). The claimant indicated her first day of training as August 21, 2023 and estimated completion date as December 10, 2023. The claimant indicated she planned to participate in part-time online classes during the fall 2023 term. The claimant attached the same spring course schedule she had included in her DAT application. The claimant also attached a fall 2023 course registration that included three classes for a total of seven credit hours. One of the courses indicates it is to be online. The other two indicate the course hours are to be determined (TBD).

On May 11, 2023, IWD Benefits Bureau denied the claimant's request for TEB benefits and referenced a May 7, 2023 effective date for the denial. See the May 11, 2023 (reference 05) decision.

The claimant testified at the June 19, 2023 appeal hearing that she decided to switch to full-time academic studies following her March 29, 2023 discharge from Wild Rose. However, this assertion is inconsistent with the claimant's April 27, 2023 TEB application.

The claimant amended her approach to pursuing TEB benefits when she filed her May 17, 2023 appeal from the reference 05 TEB denial decision. The claimant attached a full-time (13 credit hours) fall 2023 course registration document to her May 17, 2023 appeal. The claimant is not in full-time studies, but instead conditions her tentative plans to switch to full-time studies during the fall 2023 term on being awarded TEB benefits. All of the fall 2023 courses for which the claimant has registered are offered online and allow the claimant discretion to decide when to participate in the online courses. The claimant is entertaining switching one of the online courses to a hybrid course, which would require the claimant to participate from 5:30 p.m. to 9:00 p.m. on Tuesday and Thursday. None of the fall 2023 proposed schedule would conflict with the claimant's recent history of working 9:00 a.m. to 5:00 p.m. Though the claimant indicated in her April 27, 2023 TEB application, and in her testimony in Appeal Number 23A-UI-04891-DZ-T, that she would finished with her studies in December 2023 if she continued to go part-time, the claimant now asserts she would only be able to finish in fall 2023 if she is approved for TEB and would otherwise finish in spring 2024.

Though the claimant asserts she must complete her academic studies to gain access to the I.T. cyber security field, she concedes she performed similar work for Wild Rose without such academic credentials.

REASONING AND CONCLUSIONS OF LAW:

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

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 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 one calendar year following 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 claim has expired or has 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).

For several reasons, any one of which would be disqualifying, the claimant is not eligible for training extension benefits. The claimant did not separate from a declining occupation. Nor was the claimant's involuntary separation from the I.T. Coordinator position at Wild Rose was not due to a permanent reduction in operations. The claimant has not exhausted regular benefits. The claimant is not in department approved training. Indeed, IWD has specifically rejected the claimant's application for DAT. The claimant is not currently enrolled in full-time academic studies. Rather the claimant has consistently pursued part-time academic studies and preconditions any switch to full-time studies on being awarded TEB benefits. This is simply not how TEB benefits work. Though the claimant has selected a new high-demand occupation, the claimant has already been working in that occupation without her desired academic credential, meaning the course of study is not for entry into the desired high-demand occupation. The claimant application for TEB benefits is DENIED.

DECISION:

The May 11, 2023 (reference 05) decision is AFFIRMED. The claimant is not eligible for training extension benefits. The claimant's request for training extension benefits is denied.

REMAND:

This matter is REMANDED to IWD Benefits Bureau for consideration of whether the claimant has been able to work and available for work since April 9, 2023.



James E. Timberland
Administrative Law Judge

June 26, 2023
Decision Dated and Mailed

jet/rvs

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

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.

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.