

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DOVEANNA LEKIN**  
Claimant

**APPEAL 17A-UI-09707-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 01/15/17  
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:**

The claimant/appellant filed an appeal from the September 11, 2017 (reference 03) unemployment insurance decision that denied claimant's request for training extension benefits. The claimant was properly notified of the hearing. A telephone hearing was held on October 9, 2017. The claimant, Doveanna Lakin, participated personally. Witnesses Shawn Lakin and Louise Zimmerman participated as witnesses on behalf of the claimant. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

**ISSUES:**

Did the claimant file a timely appeal?  
Is the claimant eligible to receive training extension benefits?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that:

Claimant filed her initial claim for benefits with an effective date of January 15, 2017. Claimant does reside in Iowa and resides in Region 10 (Linn County). She has exhausted all benefit payments on regular unemployment insurance benefits. The application for training extension benefits was submitted before the end of the benefit year. In August of 2017, she started school at Kirkwood Community College to receive a degree as a paralegal, and expects to complete that training in June of 2019. She is making satisfactory progress.

A decision finding that the claimant was not eligible for training extension benefits was issued on September 11, 2017 (reference 03). Claimant received that decision within 10 days of the date of mailing. The decision stated that an appeal must be filed or postmarked by September 21, 2017. Claimant attempted to file her appeal online on September 21, 2017. Claimant attempted for several hours to file her appeal online, however, the online system was not

responding. Claimant was eventually able to file her online appeal at 12:05 a.m. on September 22, 2017.

The claimant was involuntarily separated from full-time employment at Area Substance Abuse Council Inc. as an office manager and secretary. Her job duties included, but were not limited to, greeting clients, accepting payments, supervising a secretary, providing tours of the facility, and completing documentation. This employer operates a residential drug and alcohol rehabilitation facility. The facility has 36 apartment units.

Claimant did not separate from employment in a declining occupation. The declining occupations for Region 10 include farmers, ranchers, and other agricultural managers; bus drivers, school or special client; postal service mail carriers; food service managers; cooks, fast food; correctional officers and jailers; and career/technical education teachers, secondary school. Claimant did not separate from seasonal employment.

Claimant's position at the employer has not been replaced but her job duties have been consumed by other employees. Claimant did not separate from employment due to a plant closure or permanent reduction in operations. While the facility does not house as many clients as it was when claimant was employed; the facility will fill the units if it has clients to house. As such, this is not a permanent reduction in operations but rather a temporary reduction in operations.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes:

The first issue to be addressed is whether the claimant filed a timely appeal. The administrative law judge finds that the claimant did file a timely appeal.

Iowa Code § 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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 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). Claimant attempted to file her claim online on September 21, 2017, however, the online system was not responding and the appeal failed to be transmitted until September 22, 2017.

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 administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to the Agency's online system not responding and receiving the appeal. See Iowa Admin. Code r. 871-24.35(2). The appellant's attempt to file an appeal in a timely manner was thwarted by the online system failing to respond and was not due to delay by the party. The appeal was filed within a reasonable time thereafter. Therefore, the appeal shall be accepted as timely.

The second issue to be addressed is whether claimant is eligible to receive training extension benefits. The administrative law judge finds that she is not.

Iowa Code § 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 § 96.4, subsection 3, or § 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 § 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.

(emphasis added).

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 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 individual must be enrolled in the training no later than the end of the benefit year which included the separation which made the individual eligible for training benefits or the week in which any federal benefit program based upon that benefit year is exhausted. Enrolled before the end of the benefit year means the individual has taken all steps available for entry into the training and has secured a reserved position in the training class. The individual has paid tuition or will pay tuition when the training starts. The training class may begin after the end of the benefit year. The application for training benefits must be received 30 days after the end of the benefit year or 30 days after 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 § 96.3(5).

(emphasis added).

Claimant does not meet the eligibility requirements for unemployment benefits because she was not separated from a declining occupation or due to a plant closure or *permanent* reduction in operations. She was not separated from seasonal employment. Therefore, training extension benefits must be denied.

**DECISION:**

The September 11, 2017 (reference 03) unemployment insurance decision is affirmed. The claimant is not eligible to receive training extension benefits.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/scn