

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHELE A PEREIRA
Claimant

APPEAL 17A-UI-11366-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 08/13/17
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.3(5)b – Training Extension Benefits
871 IAC 24.40 – Training Extension Benefits

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 7, 2017, (reference 03), unemployment insurance decision denying the request for training extension benefits. After due notice was issued, a telephone conference hearing was scheduled to be held on November 28, 2017. Claimant participated.

ISSUES:

Is the appeal timely?

Is the claimant eligible to receive training extension benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant voluntarily resigned from her position as a production worker with Team Staffing in August 2017 so she could begin school on a full-time basis. Claimant resides in Region 10. She filed a claim for benefits with an effective date of August 13, 2017. Claimant has not exhausted all regular unemployment insurance benefits. The application for TEB was submitted August 7, 2017. Claimant began attending Kirkwood Community College on August 21, 2017, to obtain a nursing degree.

On September 1, 2017, a reference 01 decision was issued finding claimant disqualified from receiving unemployment insurance benefits due to a separation from employment with Team Staffing Solutions. The decision found claimant resigned to go to school. On September 7, 2017, a reference 03 decision was issued denying claimant's request for training extension benefits. The decision warned that the appeal deadline was September 17, 2017. Claimant received the decision within the appeal period. Claimant took the reference 01 and reference 03 decisions into her local Iowa Workforce Development office where she was instructed that she only needed to appeal the reference 01 decision. Claimant followed the instructions. On October 3, 2017, an administrative law judge issued a decision affirming the reference 01

decision denying benefits. See 17A-UI-09158-NM-T. The decision was also affirmed by the Employment Appeal Board on November 1, 2017.

On November 6, 2017, claimant was talking to her uncle about the situation. Claimant's uncle advised her that she could also appeal the reference 03 decision. Claimant filed an appeal the same day.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the appeal is timely. For the following reasons, the administrative law judge concludes it is.

Iowa Code § 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 claimant's failure to file an appeal within the appeal period was solely because of incorrect information received from an IWD customer service advisor. She found out about the misinformation upon speaking with her uncle, and then promptly filed an appeal. The 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 claimant is eligible to receive training extension benefits. For the following reasons, the administrative law judge concludes 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 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 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.

Claimant does not meet the eligibility requirements for unemployment benefits because she was not separated as part of a reduction in force or from a declining occupation. Claimant argues she was separated from a previous employer, IAC, as part of a reduction in force. However, she resigned from the employment she most previously held prior to filing her claim for unemployment insurance benefits. That employment was as a production worker, which is not considered a declining occupation.

Even if claimant's separation from employment were qualifying, she is not eligible to receive training extension benefits because she has not exhausted all regular unemployment insurance benefits. Exhausting all regular unemployment insurance benefits is a prerequisite to receiving training extension benefits.

While claimant's desire for additional training is understandable and admirable, she has not established she is eligible for training extension benefits. Therefore, training extension benefits must be denied.

DECISION:

The September 7, 2017, (reference 03) representative's decision is affirmed. The appeal is timely. The claimant is not eligible to receive training extension benefits.

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Administrative Law Judge
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Decision Dated and Mailed

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