

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARK A VANNOY
Claimant

APPEAL 18A-UI-11759-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 03/11/18
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:

Mark A. VanNoy (claimant) appealed the November 20, 2018, reference 02, unemployment insurance decision that denied training extension benefits. After due notice was issued, a telephone hearing was held on December 21, 2018. The claimant participated. The department's Exhibit D1 was admitted into the record. The administrative law judge took official notice of the administrative record, including fact-finding documents and the claimant's appeal letter.

ISSUES:

Is the claimant's appeal timely?
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: The claimant resides near Council Bluffs, Iowa in Pottawattamie County which is Region 13.¹ The claimant was involuntarily separated from full-time employment as a Maintenance Mechanic Technician in March 2018. He was not voluntarily separated from a declining occupation² or involuntarily separated due to a permanent reduction of operations.

The claimant filed a claim for benefits with an effective date of March 11, 2018. He exhausted all benefit payments on regular unemployment insurance benefits during the week ending August 4, 2018. At the time he exhausted his regular benefits, the claimant was not approved for Department Approved Training (DAT) or training through the Workforce Innovation and Opportunity Act³ (WIOA). He submitted applications for training extension benefits (TEB) on

¹ See <https://www.iowaworkforcedevelopment.gov/regional-profiles> (last accessed December 21, 2018).

² See <https://www.iowaworkforcedevelopment.gov/declining-occupations-region-2010-2020> (last accessed December 21, 2018).

³ WIOA was signed into law on July 22, 2014 as the reauthorization of the Workforce Investment Act of 1998.

October 7, 2018 and November 19, 2018, which was more than thirty days after he exhausted his regular unemployment insurance benefits.

The unemployment insurance decision denying TEB was mailed to the claimant's address of record on November 20, 2018. The claimant did not receive the decision and learned he had been denied when he contacted his local office on December 3, 2018. He filed his appeal within ten days after that communication.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is timely and he is not eligible to receive TEB.

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

Filing – determination – appeal.

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.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action

of the United States postal service, the division shall issue an appealable decision to the interested party.

The claimant did not have an opportunity to appeal the unemployment insurance decision because the decision was not received. Without 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 claimant filed an appeal within a reasonable period of time after discovering the disqualification. Therefore, the appeal shall be accepted as timely.

Iowa Code section 96.3(5)b provides:

Payment – determination – duration – child support intercept.

5. 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. [Emphasis added.]

(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. [Emphasis added.]

(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 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. [Emphasis added.]

(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).

The claimant does not meet the eligibility requirements for TEB because he was not involuntarily separated from full-time employment due to a permanent reduction of operations, he was not enrolled in training with the approval of the director, also known as DAT, or training through WIOA at the time he exhausted his claim for regular unemployment insurance benefits, and he filed his application for training extension benefits more than thirty days after he exhausted his regular unemployment insurance benefits. Therefore, while the claimant's desire for additional education is understandable and admirable, TEB must be denied.

DECISION:

The claimant's appeal is timely. The November 20, 2018, reference 02, unemployment insurance decision is affirmed. The claimant is not eligible to receive TEB.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/rvs