

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**MARILEA L KINSETH**  
Claimant

**APPEAL NO: 10A-EUCU-00106-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 04/05/09**  
**Claimant: Appellant (2)**

Section 96.3-5-b – Training Extension Benefits  
Section 147 – Health –Related Professions/Licensing-Certification  
Section 152C – Massage Therapy  
Section 96.6-2 – Timeliness of Appeal  
871 IAC 24.35(2) – Appeal Delay

**STATEMENT OF THE CASE:**

Marilea Kinseth (the claimant) appealed a representative's January 11, 2010 decision (reference 06) that denied her request for training extension benefits. A telephone hearing was held on March 27, 2010. The claimant participated.

**ISSUES:**

Whether the appeal is timely.

Whether the claimant is eligible for training extension benefits.

**FINDINGS OF FACT:**

The claimant received the department decision mailed January 11, 2010, and she was aware of the appeal deadline date of January 21. The claimant contacted her local Workforce Center about the denial of training extension benefits (TEB), and she was assured there was no reason to appeal, because she had been approved for training. The department issued a decision dated July 28, 2009, reference 05, that granted claimant department approved training at the Iowa Lakes Community College for massage therapy for the period from August 23, 2009 through April 3, 2010. After discussing the decision affect with several department representatives, she was finally urged to submit an appeal on February 17, 2010 that was received on that date.

The claimant established a claim for benefits effective April 5, 2009. The claimant exhausted her regular unemployment insurance benefits during the week ending July 11, 2009. The claimant received Emergency Unemployment Compensation benefits from July 12 through January 2, 2010.

The claimant started going to school in the fall term of 2009 at Iowa Lakes Community College. The claimant applied for department training to become a certified massage therapist, and she received Department Approved Training from August 23, 2009 through April 3, 2010. The claimant currently has a 4.0 G.P.A. taking primarily life science courses, and anticipates she will complete her training on July 31, 2010. There is a high demand for people trained in healthcare professions such as physical therapists/aides and practitioners.

Iowa Code Chapter 147 (Health-Related Professions) and Chapter 152C (Massage Therapy) set for the educational and certification requirements for a massage therapist to be licensed in the state of Iowa. One requirement is that the applicant must complete a massage education curriculum at an accredited school and received a diploma other evidence of work-course completion.

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

Iowa Code section 96.3-5-b(1) provides that a person 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 and who is in training with the approval of the director (DAT training) or in a job training program pursuant to the Workforce Investment Act of 1998, Pub. L. No. 105-220, (WIA training) at the time regular benefits are exhausted, may be eligible for training extension benefits.

The claimant established that she has met the preliminary requirements to be eligible for training extension benefits. She was in a department approved training program prior to the end of her regular benefit year (April 4, 2010).

Next, a claimant must meet establish the following criteria to be eligible for training extension benefits: The training must be for a high-demand occupation or high-technology occupation, a claimant must have exhausted all regular and emergency unemployment benefits, and the claimant must be enrolled and making satisfactory progress to complete the training. Iowa Code section 96.3-5-b(5).

The claimant has satisfied the criteria stated above. The department denied claimant TEB, because the claimant's academic program would qualify her for massage therapist/certification that is not on the high-demand occupation list. While the named occupation is not listed, there are extensive references to all types of healthcare professionals. The state of Iowa recognizes massage therapists as in the same category of professionals such as: doctors, psychologists, nurses, physical therapists, mental health counselors, social workers, athletic trainers, etc., and it establishes a Massage Therapy Board to oversee the licensing and practice of massage therapist. While massage therapist may be considered as a high-demand occupation under the category of all other workers (referencing healthcare practitioners), it is a high-technology occupation based on the education/training-skill level/ and certification achievement in order to qualify for state licensing.

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.

871 IAC 24.35(2) provides:

(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 department that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service or its successor.

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 department 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 department error or misinformation or delay or other action of the United States postal service or its successor, the department shall issue an appealable decision to the interested party.

The claimant filed a timely appeal. The delay was due to department representatives assuring the claimant there was nothing to be concerned about until February 17 when she spoke to a representative who advised her to appeal

Therefore, the claimant is eligible for training extension benefits.

**DECISION:**

The representative's January 11, 2010 decision, reference 06, is reversed. The claimant filed a timely appeal. The claimant is eligible for training extension benefits.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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