

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AHMED G SALEM
Claimant

APPEAL 19A-UI-08940-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 08/18/19
Claimant: Appellant (2)

Iowa Code § 96.6(2) – Filing – Timely appeal
Iowa Code § 96.3(5)b – Training Extension Benefits
Iowa Admin. Code r. 871-24.40 – Training Extension Benefits

STATEMENT OF THE CASE:

Claimant appealed the October 30, 2019 (reference 04) unemployment insurance decision that denied training extension benefits. After due notice was issued, a telephone hearing was held on December 6, 2019. The claimant participated. The administrative law judge took official notice of the administrative record, including fact-finding documents.

ISSUE(S):

- I. Is the appeal timely?
- II. Is the claimant eligible to receive training extension benefits (TEB)?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, makes the following findings of fact:

On March 20, 2019, claimant requested and was allowed Department Approved Training (DAT) effective March 17, 2019. Claimant's weekly benefit amount was \$445.00. The maximum benefit amount was \$5,057.43. Claimant's benefits were exhausted in the benefit week ending November 9, 2019.

On October 25, 2019, claimant applied for Training Extension Benefits (TEB). The application was received before the end of the benefit year. He indicated he was training at Iowa State University to become an electrical engineer. An October 30, 2019 (reference 04) unemployment insurance decision denied this request, finding he was not separated from a declining occupation; was not involuntarily separated from employment as a result of a permanent reduction of operations; and was not separated from a seasonal occupation.

The October 30, 2019 (reference 04) decision was mailed to claimant at 525 Kellogg Ave., Ames, IA 50010-2534 on October 30, 2019. That was claimant's correct address on that date. During

the hearing, claimant identified his current mailing address as PO Box 265, Ames, IA 50010 0265. He checks his mail regularly, every few days. Claimant did not closely examine the decision for an appeal deadline upon receipt, as he believed he had 10 days to appeal from when he received it and planned to appeal it within a few days. Claimant did file the appeal within several days of receiving it. Claimant is unsure when exactly he received the decision.

The decision states that it becomes final unless an appeal is postmarked or received by the Iowa Workforce Development Appeals Section by November 9, 2019. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. Claimant appealed the decision via facsimile on November 13, 2019. Claimant's appeal was received by Iowa Workforce Development on that date.

Claimant has had issues with timely receiving documents from the department in the past. Claimant believes this is due to confusion about his address. Specifically, claimant believes this is because the department was sending mail to a PO Box at the Kellogg Ave. address, rather than to the PO Box or the Kellogg Ave. address. Claimant believes this may have caused confusion with the post office. Claimant has regularly updated his address with the department.

Claimant is enrolled at Iowa State University and pursuing an electrical engineering degree. He expects to complete his degree by the end of 2020 at the latest, and as soon as the end of July 2020. He is making satisfactory progress in the program.

Claimant resides in Region 11.¹ The claimant's area of study is for an occupation that is considered to be a high-demand occupation (HDO) as defined by Iowa Workforce Development (IWD) in Region 11 or a high-tech occupation or training approved under the Workforce Investment Act (WIA).² Electrical engineering is a broad field of study that could include high-tech occupations listed in Region 11, such as industrial engineers and mechanical engineers.

Claimant's last place of employment was Superior Talent Resources. This was a staffing agency that staffed primarily for Siemens Corp., a construction company. This was seasonal work. Claimant has not been assigned or performed work there since August 25, 2019. Claimant did not voluntarily quit without good cause and was not discharged for misconduct. Claimant was not involuntarily separated from employment with Superior Talent Resources as a result of a permanent reduction of operations, and construction is not a declining occupation in Region 11. However, construction is seasonal work.³

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the October 30, 2019 (reference 04) unemployment insurance decision that denied training extension benefits is REVERSED. The administrative law judge concludes the claimant is eligible to receive training extension benefits.

I. Is the appeal timely?

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

¹ See <https://www.iowaworkforcedevelopment.gov/regional-profiles> (last accessed December 6, 2019).

² See <https://www.iowaworkforcedevelopment.gov/2012-2022-high-demand-and-high-growth-occupations> (last accessed December 6, 2019).

³ See https://www.iowaworkforcedevelopment.gov/sites/search.iowaworkforcedevelopment.gov/files/2010-2020%20Declining%20Occupations%20By%20Region_0.pdf (last accessed December 6, 2019).

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 Administrative Code 871—24.35(96) provides in pertinent part:

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

24.35(1) Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division: a. If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion. b. If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES. c. If transmitted by any means other than those outlined in paragraphs 24.35(1)“a” and “b,” on the date it is received by the division.

24.35(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 division 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.

24.35(3) Delivery by mail. Any notice, report form, determination, decision, or other document mailed by the division shall be considered as having been given to the addressee to whom it is directed on the date it is mailed to the addressee's last-known address. The date mailed shall be presumed to be the date of the document, unless otherwise indicated by the facts.

24.35(4) Electronic delivery. Any notice, report form, determination, decision, or other document sent by the division via the U.S. Department of Labor state information data exchange system shall be considered as having been given to the party to whom it is directed on the date it is submitted on the system. The date submitted shall be presumed to be the date of the document, unless otherwise indicated by the facts.

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. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976). Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. 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. IDJS*, 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. IDJS*, 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. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973).

The record shows that the appellant did not have a reasonable opportunity to file a timely appeal due to no fault of his own. While it is unclear whether the delay in receipt was due to division error or misinformation or delay or other action of the United States postal service, the administrative law judge finds credible claimant's testimony that he filed his appeal within a few days of receiving it. Accepting that as factual, that would mean claimant likely did not receive the decision until on, after or, or just shortly before the deadline to appeal. This deprived claimant of a meaningful opportunity to assert an appeal in a timely fashion. Therefore, the administrative law judge finds claimant's appeal was timely and will examine the next issue.

II. Is the claimant eligible to receive training extension benefits (TEB)?

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 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.

(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 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 benefits have 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).

Claimant meets the eligibility requirements for TEB. While claimant was employed by a staffing agency, the staffing agency staffed primary for Siemens Corp., a construction business, which is where claimant was assigned. Construction is an occupation for which there is seasonal demand. Furthermore, he is enrolled in and making satisfactory progress in training for a high-technology occupation.

DECISION:

The October 30, 2019 (reference 04) unemployment insurance decision that denied training extension benefits is REVERSED. Claimant is eligible to receive TEB, so long as he meets all other eligibility requirements.

Andrew Duffelmeyer
Administrative Law Judge

Decision Dated and Mailed

abd/scn