

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TEAH K KLAYON
Claimant

APPEAL 19A-UI-00175-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 08/05/18
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:

Teah K. Klayon (claimant) appealed the December 24, 2018, reference 06, unemployment insurance decision that denied training extension benefits. After due notice was issued, a telephone hearing was held on January 24, 2019. The claimant participated. The Department's Exhibits D1 and D2 were admitted into the record. The administrative law judge took official notice of the administrative record, including fact-finding documents.

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 in Polk County which is Region 11.¹ The claimant was involuntarily separated from full-time employment as a Mechanic in July 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 August 5, 2018. On November 3, he exhausted all benefit payments on regular unemployment insurance benefits. At the time benefits were exhausted, the claimant was not attending or enrolled in Department Approved Training (DAT) or training through the Workforce Innovation and Opportunity Act³ (WIOA). The claimant submitted his application for training extension benefits on December 20, more than thirty days after he exhausted his regular unemployment insurance benefits.

¹ See <https://www.iowaworkforcedevelopment.gov/regional-profiles> (last accessed January 25, 2019).

² See <https://www.iowaworkforcedevelopment.gov/declining-occupations-region-2010-2020> (last accessed January 25, 2019).

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

The decision denying training extension benefits was mailed to the claimant's last known address of record on December 24, 2018. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by January 3, 2019. The appeal was not filed until January 8, 2019, which is after the date noticed on the disqualification decision, because the claimant does not check his mail on a regular basis and did not discover the decision until that date.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is untimely.

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 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). Pursuant to rules Iowa Admin. Code r. 871-26.2(96)(1) and Iowa Admin. Code r. 871-24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. Iowa Dep't of Job Serv.*, 341 N.W.2d 52 (Iowa 1983).

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. 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 record shows that the appellant did have a reasonable opportunity to file a timely appeal. The claimant's decision not to check his mail on a regular basis was a personal decision. The claimant has not established that the failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). As the appeal was not timely filed pursuant to Iowa Code § 96.6(2), the unemployment insurance decision shall remain in effect. See *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

In the alternative, even if the claimant had filed a timely appeal, training extension benefits would still be denied.

Iowa Code section 96.3(5)b provides, in relevant part:

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.]

Iowa Admin. Code r. 871-24.40 provides, in relevant part:

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.]

...

(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.]

The claimant does not meet the eligibility requirements for training extension benefits because he was not voluntarily separated from a declining occupation or involuntarily separated due to a permanent reduction of operations; he was not enrolled in training with the approval of the director, otherwise known as DAT, or training through WIOA when regular benefits were exhausted; and, he did not submit the application for training extension benefits within thirty days of exhausting his claim for regular benefits. Therefore, while the claimant's desire for additional education is understandable and admirable, training extension benefits would be denied.

DECISION:

The December 24, 2018, reference 06, unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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