

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LISA M KROUGH
Claimant

APPEAL 20A-UI-01824-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 10/13/19
Claimant: Appellant (1)**

Iowa Code § 96.4(6)a – Department Approved Training
Iowa Admin. Code r. 871-24.39 – Department Approved Training
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant/appellant, Lisa M. Krough, filed an appeal from the February 14, 2020 (reference 09) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied Department Approved Training (“DAT”). After proper notice, a telephone hearing was held on March 17, 2020. The hearing was held jointly with Appeal 20A-UI-01825-JC-T. The claimant participated personally.

The administrative law judge took official notice of the administrative records. Department Exhibit D-1 was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

Note to claimant: Additional information about food, housing, and other resources, can be found by dialing 211 or at www.211iowa.org.

ISSUE:

Is the claimant's appeal timely?
Is the claimant eligible for Department Approved Training (DAT)?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed an initial claim for benefits effective October 13, 2019. She most recently worked as a full-time corrections officer at the Newton Correctional Center. When she worked for the employer, she worked the third shift (overnights) from Saturday through Wednesday.

Claimant is enrolled at Iowa Valley Continuing Education. She is taking one class in phlebotomy, which began on February 25, 2020. It is scheduled to end on May 21, 2020 with clinicals to follow. The class is scheduled Tuesdays and Thursdays from 6:00 p.m. to 9:30 p.m.,

with three additional classes on March 21, 25 and April 22, 2020. (The class schedule is currently disrupted due to COVID-19 restrictions.) She is making satisfactory progress to date.

The claimant has been offered and accepted a position with the USDA, which will allow her to work full-time Monday through Friday during the days and attend her evening classes. Her start is suspended due to COVID-19 restrictions and she is unsure when she'll be able to start new employment.

An initial unemployment insurance decision (Reference 09) resulting in a denial of department approved training (DAT) was mailed to claimant's last known address of record on February 14, 2020. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by February 24, 2020. The claimant checks her mail at the post office frequently, but has met with the post office due to delays and non-receipt of mail, including other IWD mail. She received the decision February 26, 2020, after the February 24, 2020 deadline to appeal. She called IWD on February 26, 2020 about the decision and went the local IWD office in Marshalltown the next day to file her appeal. IWD representative, Sergio, helped her. On February 27, 2020, the appeal was filed online (Department Exhibit D-1). This is after the date noticed on the disqualification decision.

REASONING AND CONCLUSIONS OF LAW:

The first issue to resolve is whether the claimant filed a timely appeal. She did.

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. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

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 claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received in a timely fashion. Without timely 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 received the initial decision on February 26, 2020 and filed the appeal within one day of receipt. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes the claimant is not eligible for Department Approved Training (DAT).

Iowa Code section 96.4(6)a-b provides:

6. a. An otherwise eligible individual shall not be denied benefits for any week because the individual is in training with the approval of the director, nor shall the individual be denied benefits with respect to any week in which the individual is in training with the approval of the director by reason of the application of the provision in subsection 3 of this section relating to availability for work, and an active search for work or the provision of section 96.5, subsection 3, relating to failure to apply for or a refusal to accept suitable work. However, an employer's account shall not be charged with benefits so paid.

b. (1) An otherwise eligible individual shall not be denied benefits for a week because the individual is in training approved under 19 U.S.C. section 2296(a), as amended by section 2506 of the federal Omnibus Budget Reconciliation Act of 1981, because the individual leaves work which is not suitable employment to enter the approved training, or because of the application of subsection 3 of this section or section 96.5, subsection 3, or a federal unemployment insurance law administered by the department relating to availability for work, active search for work, or refusal to accept work.

(2) For purposes of this paragraph, "suitable employment" means work of a substantially equal or higher skill level than an individual's past adversely affected employment, as defined in 19 U.S.C. section 2319(l), if weekly wages for the work are not less than eighty percent of the individual's average weekly wage.

Iowa Admin. Code r. 871-24.39 provides:

Department-approved training. The intent of department-approved training is to allow for claimants to return to the labor market after attending vocational training while being paid unemployment insurance benefits. Vocational training is nonacademic, skill-oriented training that provides the student with job tools and skills that can be used in the workplace. Vocational training includes technical, skill-based, or job readiness training intended for pursuing a career. Upon approval from the department, the claimant shall be exempt from the work search requirement for continued eligibility for benefits. In order to be eligible for department-approved training programs and to maintain continuing participation therein, the individual shall meet the following requirements:

(1) The claimant must make application to the department setting out the following:

- a. The educational establishment at which the claimant would receive training.
- b. The estimated time required for such training.
- c. The date the training will be complete or the degree will be obtained.
- d. The occupation which the training is allowing the claimant to maintain or pursue.
- e. The training plan, indicating the requirements which must be met in order to complete the certification or degree.

(2) A claimant may receive unemployment insurance while attending a training course approved by the department, under the following conditions:

- a. The educational establishment must be a college, university or technical training institution.
- b. The training must be completed 104 weeks or less from the start date.
- c. The individual must be enrolled and attending the training program in person as a full-time student.**

While attending the approved training course, the claimant need not be available for work or actively seeking work, except if the hours of the training are outside the regular hours worked in the base period employment. After completion of department-approved training, the claimant must, in order to continue to be eligible for unemployment insurance, place no restriction on employability. The claimant must be able to work, be available for work and be actively searching for work. In addition, the claimant may be subject to disqualification for any refusal of work without good cause after the claimant has completed the training.

(3) The claimant must show satisfactory attendance and progress in the training course prior to being considered for a subsequent approval and must demonstrate that such claimant has the necessary finances to complete the training to substantiate the expenditure of unemployment insurance funds.

This rule is intended to implement Iowa Code section 96.4(6).

Department approved training (DAT) waives the requirements for a claimant to be able or available for work or actively seeking work, and still allows them to remain eligible for unemployment insurance benefits. At issue is whether the claimant's school schedule would warrant such waiver. Based on the evidence presented, the administrative law judge concludes the claimant does not meet the eligibility requirements for DAT and have her job search

requirement waived. Claimant is not enrolled in school full-time, as required, and even with her school schedule there are reasonable job opportunities still available to the claimant.

The administrative law judge is sympathetic and recognizes the claimant's desire to further her education and expand her job opportunities, but she does not meet the specific eligibility requirements, and therefore, department approved benefits are denied. The claimant must remain able to work, available for work, and actively and earnestly seeking work to maintain eligibility for unemployment insurance benefits.

DECISION:

The unemployment insurance decision dated February 14, 2020, (reference 09 is affirmed. The appeal is timely. The claimant's request for department approved training (DAT) is denied. The claimant must remain able to work, available for work, and actively and earnestly seeking work to maintain eligibility for unemployment insurance benefits.

Jennifer L. Beckman
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Decision Dated and Mailed

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