

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

YOSIYA J NGWESHE
Claimant

APPEAL 19R-UI-00183-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 12/31/17
Claimant: Appellant (1R)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.3(5)b – Training Extension Benefits

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 6, 2018, (reference 06), unemployment insurance decision that denied Training Extension Benefits (TEB). After due notice was issued, a telephone conference hearing was scheduled to be held on January 28, 2019. Claimant participated. Iowa Workforce Development did not participate. Department's Exhibit D-1 was received. The administrative law judge took official notice of the administrative record, including the April 20, 2018, decision denying Trade Readjustment Allowances (TRA).

ISSUES:

Is the appeal timely?
Is claimant eligible to receive Training Extension Benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Iowa Workforce Development mailed the reference 06 unemployment insurance decision to the appellant's address of record on November 6, 2018. The appellant did not receive the decision until November 28, 2018. The appeal was sent within five days after receipt of the decision.

Claimant is eligible for federally funded benefits under the Trade Act based on a separation from employment on December 22, 2016, with International Automotive Components. Claimant applied for Trade Act Benefits, including the weekly Trade Readjustment Allowances (TRA). Although Iowa Workforce Development approved claimant to receive future tuition assistance under the Trade Act, on April 20, 2018, it denied any further weekly TRA benefits based on his failure to timely enroll in school on a full-time basis. Claimant did not appeal that decision.

Claimant was most recently employed at West Liberty Foods. The claimant was discharged from employment on July 15, 2018, with West Liberty Foods because of attendance issues. Claimant resides in Region 10.

Sometime after his separation from employment with West Liberty Foods, claimant applied for Training Extension Benefits.

Claimant exhausted his regular unemployment insurance benefits during the one week ending November 17, 2018.

Claimant enrolled in and attended classes at the University of Iowa during the 2018 fall semester on a full-time basis. Claimant is earning a Bachelor's degree with a major in political science and a minor in French. Claimant is currently enrolled in the spring 2019 semester on a full-time basis.

Claimant has not been approved for Department Approved Training for the spring 2019 semester.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is.

Iowa Code § 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.

The appellant did not have an opportunity to appeal the unemployment insurance 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 appellant filed the appeal within five days of receipt. Therefore, the appeal shall be accepted as timely.

The next issue is whether claimant is eligible to receive Training Extension Benefits.

Iowa Code section 96.3(5)a-b provides:

a. Duration of benefits. The maximum total amount of benefits payable to an eligible individual during a benefit year shall not exceed the total of the wage credits accrued to the individual's account during the individual's base period, or twenty-six times the individual's weekly benefit amount, whichever is the lesser. The director shall maintain a separate account for each individual who earns wages in insured work. The director shall compute wage credits for each individual by crediting the individual's account with one-third of the wages for insured work paid to the individual during the individual's base period. However, the director shall recompute wage credits for an individual who is laid off due to the individual's employer going out of business at the factory, establishment, or other premises at which the individual was last employed, by crediting the individual's account with one-half, instead of one-third, of the wages for insured work paid to the individual during the individual's base period. Benefits paid to an eligible individual shall be charged against the base period wage credits in the individual's account which have not been previously charged, in the inverse chronological order as the wages on which the wage credits are based were paid. However if the state "off" indicator is in effect and if the individual is laid off due to the individual's employer going out of business at the factory, establishment, or other premises at which the individual was last employed, the

maximum benefits payable shall be extended to thirty-nine times the individual's weekly benefit amount, but not to exceed the total of the wage credits accrued to the individual's account.

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).

In order to be eligible for state-funded TEB, claimant must first exhaust federally-funded benefits. In this case, claimant was eligible for federally-funded weekly TRA benefits based on his separation from employment with International Automotive Components. While claimant filed a claim for those benefits, he did not draw the benefits until the claim expired or was exhausted.

Even if he had, claimant does not meet the eligibility requirements for TEB. This is because of his most recent separation from employment. The regulation cited above states training extension benefits are only available where "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." The regulation does not allow for TEB in cases where a claimant is discharged. The statute refers to the "last place of employment," so the relevant employer is West Liberty Foods and not International Automotive Components. In this case, claimant was discharged from his last place of employment. He did not voluntarily resign. He was not laid off due to a permanent reduction in operations. Furthermore, production worker is not a declining occupation in Region 10.

In summary, claimant is not eligible for training extension benefits based on his failure to exhaust federal benefits and because his separation from his last place of employment does not meet the eligibility requirements.

DECISION:

The November 6, 2018, (reference 06) representative's decision is affirmed. The claimant is not eligible to receive training extension benefits.

REMAND:

The issue of whether claimant is able to or available for work effective December 30, 2018, or alternatively, should be approved for Department Approved Training for the Spring 2019 semester is remanded to the Benefits Bureau for an initial investigation and decision.

Christine A. Louis
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Decision Dated and Mailed

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