

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KOSSIWA M GBETSI
Claimant

APPEAL 21A-UI-18920-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 03/21/21
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, Kossiwa M. Gbetsi, filed an appeal from the June 23, 2021, (reference 03) unemployment insurance decision that denied department approved training. After due notice was issued, a telephone hearing was held on October 18, 2021. The claimant participated. Department's Exhibit D-1 was admitted. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant's appeal timely?
Is the claimant eligible for department-approved training?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant filed a claim for benefits effective March 21, 2021. Claimant became enrolled in a course of study to receive an AAS in Accounting in August 2020 at Marshalltown Community College. During the fall 2021 semester, she is enrolled for 12 hours, which is considered full-time enrollment. She could not provide information regarding how many hours she must complete in order to obtain her AAS. She expects to complete the course in 2022 or 2023, depending on her health and its impact on her course of study. Her health has impacted how many credits she could take in the past, including over the summer of 2021. Claimant has the necessary financing to complete the training.

Claimant received a decision denying her department-approved training, which was mailed on June 23, 2021. However, she did not know when she received the decision. The decision contained a warning that an appeal must be filed by July 3, 2021. The appeal was not filed until August 27, 2021. Claimant testified that she believed she received the decision shortly before calling Iowa Workforce Development for additional information, at which time she submitted her appeal.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is ineligible to for department approved training.

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 section 96.6(2) provides, in pertinent part: “[u]nless 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(1) provides:

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 [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871—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 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.

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 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 decision, 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 shortly after receipt. Therefore, the appeal shall be accepted as timely.

Iowa Code section 96.4(6)a provides:

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 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.

Iowa Admin. Code r. 871—24.39 provides:

Department-Approved Training or Retraining Program.

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 institute.
- 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.

Claimant does not know when the course of training will conclude, and has not demonstrated that it is scheduled to end within 104 weeks of the start date. Accordingly, claimant does not meet the requirements for department-approved training.

While the administrative law judge commends claimant for her pursuit of additional training, department-approved training is denied.

DECISION:

The June 23, 2021, (reference 03), unemployment insurance decision is affirmed. The claimant's appeal is timely. The claimant is ineligible for department-approved training.



Alexis D. Rowe
Administrative Law Judge

October 25, 2021
Decision Dated and Mailed

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