

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
Division of Administrative Hearings  
Wallace State Office Building  
Des Moines, Iowa 50319

**Appeal Number: 08-IWDUI-084**  
**OC: 01/02/08**  
**Claimant: Appellant (1)**

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**DAWN M LOYD**  
**201 W ELM STREET APT #A**  
**WEST UNION IA 52175-1385**

STATE CLEARLY

**IOWA WORKFORCE DEVELOPMENT**  
**DEB SHEPHERD TRA BNFT COORDINATOR**  
**150 DES MOINES STREET**  
**DES MOINES IA 50309-5563**

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to the department. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

DAN ANDERSON, IWD

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(Administrative Law Judge)

June 20, 2008

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(Decision Dated & Mailed)

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20 CFR 617 – Employee Benefits/TRA  
19 U.S.C. 2291 – Qualifying Requirements for Workers/TRA Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development Department decision dated May 16, 2008, which held the claimant was not entitled to receive TRA benefits, because he did not meet the 8/16 deadline start-date for TAA approved training.

The hearing was held pursuant to due notice on September 29, 2008, by telephone conference call. The claimant participated. Carol Paulus, TAA/NAFTA Coordinator, participated on behalf of Iowa Workforce Development.

## FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses, and having considered all of the evidence in the record, finds: The claimant filed an unemployment claim with the department after her lay-off from DURA Brake Systems LLC on December 30, 2007. The department determined the impact date to be December 21, 2005 with an expiration date of January 19, 2009. The claimant attended class room training and signed a letter of intent to meet the deadline requirements for TRA benefits or request a waiver of the 8/16 requirement. The claimant expressed a desire to pursue a medical lab technician occupation. Unfortunately, the local workforce development office (Postville) failed to monitor the timing requirements for submitting a training application due to personnel problems.

The department received the claimant's request for TAA approved training on May 5, 2008 that she had signed on May 1. The claimant identified the name of her training program as legal assistant/Para legal. The proposed training start date is May 21, 2008 with an ending date of August 15, 2010.

The federal law that governs the eligibility for training has a time requirement that the deadline start-date. The applicant must be in TAA approved training by the last day of the eighth (8<sup>th</sup>) week following the petition certification date or the last day of the sixteenth (16<sup>th</sup>) week following the most recent separation from employment date, whichever is later, or a waiver must be in place extending the deadline.

At the time of his employment separation, a department representative provided the claimant with an information packet that provided the deadline date(s) for petitioning TAA approved training. Based on the claimant's separation from employment date, December 30, 20047, her 8<sup>th</sup> week deadline is March 17, 2008, and her 16<sup>th</sup> week deadline is April 26, 2008. The department did not receive and/or grant any "waiver", as to the time deadline requirements.

The department was unaware of the claimant's failure to meet the timeliness requirements for TAA approved training until the application was received on May 5, 2008. TRA Benefit Coordinator Shepherd is not aware of any department rule that allows for the backdating of a "waiver" in order to allow for the consideration of the claimant's petition when it has failed to meet the deadline start-date. The type of department err in this matter is not one that is recognized by the US Department of Labor

## REASONING AND CONCLUSIONS OF LAW:

*The issue is whether the claimant is entitled to receive the TRA income benefit in addition to the other Trade Act benefits based on her separation from DURA dated December30, 2007.*

### **19 U.S.C. section 2291. Qualifying requirements for workers**

- (a) Trade readjustment allowance conditions.** Payment of a trade readjustment allowance shall be made to an adversely affected worker covered by certification ... who files an application for such allowance for any week of unemployment which begins more than 60 days after the date on which the petition is filed that resulted in such certification was filed ... , if the following conditions are met:
- (5) (A) is enrolled in a training program approved by the Secretary ..., and (ii) the enrollment required under clause (i) occurs no later than the latest of – (I) the last day of the 16<sup>th</sup> week

after the worker's most recent separation from adversely affected employment which meets the requirements of paragraphs (1) and (2), (II) the last day of the 8<sup>th</sup> week after the week in which the Secretary issues a certification covering the worker, (III) 45 days after the later of the dates specified in subclause (I) or (2), if the secretary determines there are extenuating circumstances that justify an extension in the enrollment period, or (IV) the last day of a period determined by the Secretary to be approved for enrollment after the termination of a waiver issued pursuant to subsection (c).

The administrative law judge concludes that the claimant is NOT entitled to receive the TRA income benefit, because she failed to meet the deadline start-date requirements for TAA approved training pursuant to the law section cited above.

While the department local office may have failed to monitor the timing of the claimant's application for training and approval, the ultimate responsibility does rest with the claimant who participated in the informational meeting that sets forth the time deadline requirements. This premise is most probably why the department cannot obtain any special waiver once the deadline dates have passed. If there is no waiver of the time requirements in place (in this case April 26, 2008), then the department is requirement to observe the 8(March 17, 2008)/16(April 26, 2008) deadlines.

**DECISION:**

The decision of the representative dated May 16, 2008, is AFFIRMED. The claimant's petition/request for TRA income benefits is DENIED. The claimant is entitled to the remaining benefits associated with the approval of her training.

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