

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

**Appeal Number:** 09-IWDUI-144  
**OC:** 09/30/2007  
**Claimant:** Appellant (4)

**DECISION OF THE ADMINISTRATIVE LAW JUDGE**

**REBECCA KRULL  
11899 1ST STREET  
ROCKWELL, IA 50469-8695**

**LINDSAY ANDERSON  
TRA/TAA PROGRAM  
150 DES MOINES STREET  
DES MOINES IA 50309**

DAN ANDERSON, IWD

**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, 4th 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.

STATE CLEARLY

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.

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(Administrative Law Judge)

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August 31, 2009  
(Dated and Mailed)

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20 C.F.R. Part 617 – Trade Adjustment Assistance for Workers

**STATEMENT OF THE CASE**

Rebecca Krull filed a timely appeal from a decision issued by Iowa Workforce Development (the Department) dated June 18, 2009. In this decision, the Department terminated Ms. Krull from the Trade Act training program due to her withdrawal from training classes.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on July 14, 2009 for scheduling of a contested case hearing. A

Notice of Telephone Hearing was issued on July 17, 2009. The parties originally convened for hearing on July 30, 2009. The Department had not provided the appellant copies of the exhibits upon which it intended to rely at hearing, therefore the hearing was continued to August 11, 2009.

On August 11, 2009, a telephone appeal hearing was held before Administrative Law Judge Laura Lockard. Lindsay Anderson, Trade Adjustment Assistance (TAA) Coordinator, represented the Department and presented testimony. Appellant Rebecca Krull appeared and presented testimony. Carol Paulus, the Department's Trade Act program state administrator, was present but did not provide testimony. The Department submitted Exhibits 1 through 27, which were admitted into the record as evidence.

### **ISSUES**

Whether the Department correctly cancelled the appellant's Trade Act benefits.

### **FINDINGS OF FACT**

Rebecca Krull was employed by IMI Cornelius Inc. beginning in June, 2004. She was laid off twice from her job at IMI. Her last date of layoff was September 28, 2007.

The Department of Labor certified IMI as a trade-impacted employer on February 7, 2006. (Exh. 10). Ms. Krull attended a worker information meeting regarding benefits under the Trade Act in March, 2007. After her final layoff from IMI in September, 2007, Ms. Krull submitted a Request for Determination of Entitlement to TAA/TRA. (Exh. 10).

Ms. Krull was approved for both training and income benefits. She completed a request for training approval to complete an associates degree in criminal justice at North Iowa Area Community College (NIACC) in Mason City, Iowa. Her request was approved and she began her training on January 14, 2008. (Exh. 15).

In March, 2009, Lindsay Anderson received a copy of Ms. Krull's fall semester 2008 grades. Ms. Krull's GPA for fall 2008 was 0.30. Ms. Anderson testified that the Department's procedure is to follow up if a participant's GPA in a particular semester falls below a 2.0 to determine the reason for the low grades. Ms. Anderson spoke with Ms. Krull on March 17. Ms. Krull indicated that her grades had slipped in the fall semester due to a divorce. During that conversation, Ms. Krull stated that things were going much better for her during the present semester and that all of her grades were C or higher. Ms. Krull stated she would still be able to complete her training program by December, 2009. Ms. Anderson told Ms. Krull that she would need to submit her spring grades as soon as they became available. She also told Ms. Krull to be in touch with her local Workforce Development center or the office in Des Moines if there were challenges or issues that needed to be addressed and one of those offices could help her to address those issues.

In mid-April, 2009, Ms. Krull spoke with a student advisor at NIACC about difficulties

she was having. She was having a difficult time getting motivated to leave her home; she could barely make it to NIACC. The student advisor referred her to a campus counselor, with whom she spoke the following day. The campus counselor advised Ms. Krull to withdraw for the semester and seek medical attention. Upon the advice of the campus counselor, Ms. Krull withdrew from her classes at NIACC for the spring semester.

A few days after withdrawing from classes, Ms. Krull went to an appointment with Dr. Julie Howard. Dr. Howard diagnosed her with depression and put her on medication. Ms. Krull has been to at least one follow-up appointment with Dr. Howard since her initial diagnosis.

Ms. Krull did not notify anyone at the Department about her decision to withdraw from classes at NIACC for the spring semester. In early June, 2009, Ms. Anderson had not received spring semester grades from Ms. Krull so she contacted her and left several messages about the need to get the spring grades. On June 16, 2009, Ms. Anderson received word from a worker at Ms. Krull's local Workforce Development center that Ms. Krull had dropped off a letter at the local center. The letter stated that Ms. Krull started out doing well during the spring semester, but that after the mid-term break she did not return to NIACC. When she finally returned, it was late April. Ms. Krull stated in her letter that she consulted with a student advisor and a campus counselor and was advised to withdraw from classes. She stated that she withdrew from all her spring classes approximately April 19, 2009. (Exh. 25). Ms. Krull included with her letter a note from Dr. Howard which states,

Rebecca has been suffering from major depression since late February 2009. This has affected her school work. She sought help from me in April, and I have been following her since. She is doing very well with treatment. Please consider this with regards to her school funding.

(Exh. 26).

Ms. Anderson contacted NIACC and determined that Ms. Krull's last date of attendance was April 13, 2009. On June 18, 2009, the Department issued a decision canceling Trade Act training benefits effective April 13, 2009 based on Ms. Krull's withdrawal from classes for "non-justifiable cause." (Exh. 24).

At the information meeting she attended in March, 2007, Ms. Krull received a packet of information regarding Trade Act benefits. Included in that information was a summary of benefits. The summary of benefits states:

DROPPING OUT OF SCHOOL – When a participant stops attending training for non-justifiable cause, the training benefit will be terminated. There will be no access to any other benefits and the classroom training benefit may not be started at a later date.

(Exh. 2). The packet of information also included a section entitled "Student Contact Requirements." This section informed potential participants that any changes to the training plan must be discussed prior to the change with either the participant's local

case manager or the administrative assistant in the state office. (Exh. 4).

Ms. Krull also received a memo from Ms. Anderson at the time that her training plan was approved. The memo informs participants that “[i]f you drop out of school for any reason (and this includes recall) without notifying the Trade Office, you will not be allowed to participate in the program and you will have lost your retraining benefit forever.” (Exh. 3).

After the spring semester ended, Ms. Krull enrolled in at least three summer classes at NIACC. The record contains evidence that at least one of the courses was completed. The record does not contain any evidence regarding the outcome of the other two courses. The Department initially informed NIACC that it would fund the three classes, as well as books for the classes, since it was not aware of the withdrawal by the time Ms. Krull enrolled in the classes and a training contract was in place. After reconsideration, however, the Department determined that it would not pay for the three summer classes and books.

### **REASONING AND CONCLUSIONS OF LAW**

Trade adjustment assistance (TAA) benefits are available under the Trade Act of 1974 to certain workers who become unemployed as a result of increased imports.<sup>1</sup>

An individual who is receiving training benefits under the Trade Act is disqualified from receiving benefits if she ceases to participate in the approved training plan.<sup>2</sup> A participant has ceased participation in a training program when she fails to attend all scheduled training classes and other training activities scheduled by the training institution in any week of the training program, without justifiable cause.<sup>3</sup> Justifiable cause is defined as “such reasons as would justify an individual’s conduct when measured by conduct expected of a reasonable individual in like circumstances, including but not limited to reasons beyond the individual’s control and reasons related to the individual’s capability to participate in or complete an approved training program.”<sup>4</sup> Once an individual ceases participation, she is not eligible for benefits under the Trade Act until she resumes participation in an approved training program.<sup>5</sup>

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<sup>1</sup> 20 C.F.R. 617.2.

<sup>2</sup> 20 C.F.R. 617.18(b)(2)(i).

<sup>3</sup> 20 C.F.R. 617.18(b)(2)(ii)(B).

<sup>4</sup> 20 C.F.R. 617.18(b)(2)(ii)(C).

<sup>5</sup> 20 C.F.R. 617.18(b)(2)(i).

There is no dispute in this case that Ms. Krull ceased participation in her training program. She voluntarily withdrew from classes on the advice of a school counselor and did not complete the spring semester. The question, then, is whether there was justifiable cause for her to do so. The Department argues that there was not justifiable cause. In support of this argument, the Department points to the fact that on March 17, when Ms. Anderson spoke to Ms. Krull, Ms. Krull failed to disclose any problems and in fact stated that things were going a lot better for her during the present semester. Additionally, the Department placed heavy emphasis on the fact that Ms. Krull did not consult with anyone from the Trade Office or her local Workforce Development center before making the decision to withdraw from classes.

As to the Department's second point, it is possible that all of this could have been avoided had Ms. Krull simply kept the Department in the loop about her mental health issues and the impact they were having on her ability to participate in the training program. The Department might have agreed with Ms. Krull that temporarily withdrawing from classes was the sensible option, given her depression diagnosis and the problems she was having with school. We cannot know with certainty, however, what the outcome of such a disclosure might have been since Ms. Krull did not disclose her concerns or her plans with the Department prior to acting.

The federal regulations regarding the Trade Act, however, do not appear to require that justifiable cause be approved in advance of the participant ceasing participation in a training program. Rather, the regulations simply require that at the time that participation ended there was justifiable cause, whether or not that was communicated to the Department.

Ms. Krull's diagnosis of depression was certainly beyond her control. There is not a great deal of evidence in the record, however, regarding the effect of her depression on her schoolwork. Ms. Krull testified that she had a hard time getting off her couch and leaving her home. She testified that a family member practically had to force her to go to NIACC. There was no testimony from Ms. Krull, though, regarding how or whether she was managing other aspects of her life. In her appeal letter, Ms. Krull mentions being a single parent to a 10 year-old daughter. She did not provide any information about whether there were others who were helping her with her child-rearing responsibilities during the time period when she dropped out of school.

Additionally, the medical documentation Ms. Krull submitted to the Department does not shed a great deal of light on the severity of her depression and the impact it had on her ability to keep up with her training program. Dr. Howard merely stated that Ms. Krull's depression had "affected her school work."

During her conversation with Ms. Anderson on March 17, less than four weeks from the time that Ms. Krull withdrew from her classes, Ms. Krull reported that she was doing much better during the spring semester. Ms. Krull did not offer any explanation at hearing for the sudden downward turn between mid-March and mid-April.

The evidence in the record does not establish that Ms. Krull had justifiable cause for withdrawing from classes and ceasing participation in her approved training program. There is simply not enough evidence to conclude that the act of withdrawing from classes was the kind of action that a reasonable person would take in her situation. It is not clear from the evidence presented that her symptoms were such that withdrawal from classes was warranted. As such, the Department's decision to cancel Ms. Krull's training benefits effective April 13, 2009, the date of her withdrawal, was correct.

The Department has taken the position, however, that Ms. Krull having ceased participation means that she will not be eligible for any future training benefits under the Trade Act. The federal regulations regarding implementation of the Trade Act, however, do not support such an interpretation. The regulations provide that an individual who ceases participation is not eligible for benefits under the Trade Act until she resumes participation in an approved training program. Ms. Krull resumed her participation in her training program in the summer of 2009 with the three classes she took.

The Department's decision that Ms. Krull's Trade Act training benefits cannot be reinstated, despite her having resumed participation in her approved training program, is unsupported by the regulations governing Trade Act benefits. This part of the Department's decision must be reversed.

### **DECISION**

Iowa Workforce Development's decision dated June 18, 2009 is MODIFIED. The Department was correct in determining that Ms. Krull's benefits should be terminated effective April 13, 2009. The Department's determination that Ms. Krull cannot resume receiving Trade Act training benefits upon resuming her approved training program is incorrect and must be reversed. The Department shall take prompt steps to grant training benefits to Ms. Krull retroactive to the date that she resumed participation in the approved training program. The Department shall take any additional steps necessary to implement this decision.

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