

BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

TODD P LEE

Claimant

HEARING NUMBER: 17BUI-12483

EMPLOYMENT APPEAL BOARD
DECISION

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.3-7

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

Background: Todd Lee (Claimant) filed a claim for regular unemployment benefits with an original claim date of August 10, 2014. After collecting benefits on this claim he then filed a claim for regular unemployment benefits with an original claim date of August 9, 2015. On February 11, 2016 the Department issued a decision allowing Training Extension Benefits, based on the 2014 claim year, from 2/7/16 through 8/6/16 in the amount of \$471 per week, for a maximum allowance of \$12,246. On August 7, 2016 the Claimant started a third regular benefits year. At this time the TEB from the 2014 claim year ended. The Claimant at the same time was placed on TEB based on the 2015 claim year with approval running from 8/7/16 through 2/4/2017 in the amount of \$488 per week, for a maximum allowance of \$12,688. The Claimant was placed on the 2015 TEB rather than the 2016 regular benefits because he had not earned the requisite \$250 to be qualified for a subsequent benefit year under Iowa Code §96.4(4)(c).

(The weeks he was overpaid for regular benefits while the department detected the lack of the \$250 earnings are not significant to the current issue). On August 31, 2016 the Claimant applied for federal Trade readjustment allowance benefits (TRA). He was approved for basic TRA through March 4, 2017 in the amount \$471 per week for a maximum of \$12,246. It appears that he may also have approval for additional TRA for up to 65 additional weeks.

The overpayment in these cases result from the rule that regular benefits must be exhausted before TRA or TEB, that TRA must be exhausted before TEB, and TEB is drawn on last. The Claimant drew on TEB during a period when he could have drawn on TRA and this created an overpayment.

Claim Year 2014 Overpayment (12483): For the eleven weeks from 5/28/16 through 8/6/16 the Claimant was overpaid the full amount of the TEB paid. At \$471 per week this makes an overpayment of \$5,181. (CY 2014 Ref 05, case 12483).

Claim Year 2015 Overpayment (12482): For the three weeks ending 8/13/16, 8/20/16 and 8/27/16 the Claimant had not yet applied for TRA and so was charged the total TEB paid, which was 2015 TEB at the rate of \$488 per week. These three weeks make an overpayment of \$1,464. (CY 2015 Ref 04, case 12482). The same decision that imposed this overpayment also included an overpayment for the six week from the date the Claimant started on TRA (Week ending 9/3/16) and ending on October 8, 2016. Since the Claimant was on TRA using the claim year 2014 number of \$471, but had already been paid TEB of \$488 using the claim year 2015, he owed the difference \$17 per week for a total over these six weeks of \$102.00. The claim year 2015 overpayment was thus determined to be $\$1,464 + \$102 = \$1,566$. (CY 2015 Ref 04, case 12482).

May 20, Informational Meeting: Sometime before May 20, 2016 a letter went out informing eligible workers of a trade informational meeting on May 20. The Claimant did not receive this mailer, and as a result was unaware of the informational meeting or of the availability of TRA benefits until around August 25, 2016. Once he found out about TRA benefits, he promptly applied for them on August 31.

REASONING AND CONCLUSIONS OF LAW:

The basic issue here is that “[i]ndividuals must file and receive benefits under any federal or state unemployment insurance benefit program until the claim has expired or has been exhausted, in order to maintain eligibility for training extension benefits.” 871 IAC 24.40(5). There is little doubt, then, that the Claimant would owe the difference between TRA and the TEB he had collected during a period when he should have been on TRA. The real problem for the Claimant was that he applied on August 31 for TRA but the Department determined that he should have applied earlier, on May 20. He was overpaid for the *total* TEB in the interim on the idea that by failing to apply he had not “maintain[ed] eligibility” under 24.40(5). This does appear correct. But there is more that should be addressed.

The bulk of the overpayment charged to the Claimant results from his being overpaid for not applying back on May 20, while at the same time only being allowed TRA from August 31. We think this issue of when to start the TRA must be addressed.

We are mindful that in addressing TRA we are acting as federal agents administering the federal law. 20 CFR §617.59(e). We are also very much aware that “no provision of State law or regulations on good cause for waiver of any time limit, or for late filing of any claim, shall apply to any time limitation referred to or specified in this part 617.” 20 CFR §617.50(d). So if the Claimant is allowed to commence TRA earlier than August 31, 2016 (what in the state system we call “backdating”) it must be based on federal law.

The applicable federal regulation provides that “[a]n **initial** application for TRA, and **applications for TRA for weeks of unemployment beginning before the initial application for TRA is filed**, may be filed within a **reasonable period of time** after publication of the determination certifying the appropriate group of workers under section 223 of the Act.” 20 CFR §617.10(b)(emphasis added). This means to us that an initial application, and also applications for benefits beginning before the initial application, is governed by a “reasonable period of time” standard. The regulation goes on:

For purposes of this paragraph (b), a reasonable period of time means such period of time as the individual had good cause for not filing earlier, which shall include, but not be limited to, the individual's lack of knowledge of the certification or misinformation supplied the individual by the State agency.

20 CFR §617.10(b). So the federal regulations set out a good cause standard for allowing TRA for weeks prior to the initial application date. Here that means a good cause standard governs whether the Claimant can be allowed TRA benefits for the weeks prior to August 31, that is, for the period of the \$471 and \$488 overpayments. (The \$102 overpayment would not be affected by an earlier allowance of TRA). The testimony of the Claimant establishes that he had a “lack of knowledge of the certification” or perhaps misinformation based on never receiving notification about the informational meeting. Since the Claimant applies for TRA benefits in the same week he first knew they were available the delay here was a reasonable one. In particular, the Claimant’s lack of knowledge about the certification was not the result of a lack of due diligence on his part, and thus the delay in applying can be excused under 20 CFR §617.10(b). The Claimant should be allowed, in effect, to backdate his TRA request to the week ending May 28, 2016.

We have found that the Claimant’s TRA can be allowed for additional weeks occurring prior to the 8/31/16 TRA application date, specifically the weeks between, and including, BWE 5/28/16 through BWE 8/27/16. We are unable to tell for certain whether the Claimant’s available TRA has enough weeks to cover this period and also cover the TRA the Claimant has already received. We thus remand this matter to the Benefits Bureau of Iowa Workforce to adjust the overpayments, and also the remaining weeks of TRA availability. We note for the information of the Claimant that assuming the Claimant does indeed have 65 weeks of additional TRA approved, our calculations indicate that the overpayment would become zero for the 11 weeks between BWE 5/28/16 and 8/16/16 (because TRA and TEB are both \$471 during that period). The overpayment for the nine weeks from BWE 8/13/16 and 10/8/16 would be only \$17 per week, for a total overpayment of \$153. The available weeks of TRA remaining would be reduced by 14 weeks. But as we cannot be certain of this with the information in the record, we remand the issue of the calculations and adjustments to the Benefits Bureau.

Although the \$102 overpayment appears correct, we reverse and remand both cases because that overpayment was addressed in the same case that assessed an additional \$1,464 overpayment. For simplicity's sake – something sorely lacking in this matter – we keep together all of case 12482 as well as all of case 12483.

DECISION:

The administrative law judge's decision dated December 14, 2016 is **REVERSED**. The Employment Appeal Board concludes that the Claimant should be allowed to backdate his TRA application to the benefit week ending 5/28/2016. We remand the matter to Iowa Workforce, Benefits Bureau to make the necessary adjustments, including adjustment to the overpayment and to the remaining weeks of availability for the Claimant's TRA claim.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

RRA/fnv