

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

Appeal Number: 11-IWDUI-093
Claimant: Appellant (2)

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, 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.

CORRINA L. EVANS
1243 – 4th AVENUE
FORT DODGE, IA 50501-3454

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.

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

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.

JOE WALSH, IWD

(Administrative Law Judge)

May 27, 2011

(Dated and Mailed)

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

STATEMENT OF THE CASE

Corrina Evans appealed a decision issued by Iowa Workforce Development (IWD) dated August 23, 2010. That decision terminated Ms. Evan's classroom training pursuant to Trade Adjustment Assistance (TAA), due to lack of attendance.

IWD transmitted the case to the Department of Inspections and Appeals on April 21, 2011 for scheduling of a contested case hearing. A Notice of Telephone Hearing was issued on April 28, 2011.

On May 23, 2011, the matter proceeded to a hearing by telephone before Administrative Law Judge Robert H. Wheeler. Appellant Corrina Evans appeared pro se and testified. Trade Act coordinator Lindsay Anderson represented IWD and testified. IWD submitted documents in the administrative file that entered the record as Exhibits 1 – 12, without objection.

ISSUES

Whether the Department correctly denied the appellant's TAA classroom training benefits.

FINDINGS OF FACT

On August 3, 2009, Ms. Evans submitted an Application for Approved Training for Trade Adjustment Assistance (TAA) benefits. Ms. Evans' employment with Electrolux ended on November 14, 2008, due to lack of work. Her application was approved to attend training at Iowa Central Community College to become a Paramedic Specialist. The application further stated that the program would run from September 1, 2009, until completion on May 20, 2011. (Exhibits 4, 7; Anderson testimony).

On June 22, 2010, Ms. Anderson learned that Ms. Evans had failed her Human Anatomy course twice, and also failed Medical Terminology. In addition, Ms. Anderson learned that Ms. Evans had left school for a week without notice. Ms. Anderson requested and received a transcript of Ms. Evans grades on August 23, 2010. Because it appeared that Ms. Evans had stopped attending classes, Ms. Anderson issued the notice of decision terminating Ms. Evans' TAA benefits due to lack of attendance. Ms. Evans brought the present appeal. (Exhibits 1, 2, 10, 11, 12; Anderson testimony).

The denial in this case was based 20 CFR 617.18(2). That section allows for the disqualification of an individual who ceases to participate in a training program. The definition of "cease participation" includes failure to attend all scheduled training classes. At the hearing Ms. Anderson testified that she cited this regulation in error. She now believes that this section of the regulations applies only to income benefits or Trade Readjustment Allowances (TRA), rather than the TAA benefits received by Ms. Evans. Ms. Anderson testified that Ms. Evans should be allowed to return to her training program with an opportunity to request more time for completion and to change the focus of her major area of study to achieve more success. (Exhibit 1; Anderson testimony).

Ms. Evans testified that she has a learning disability that has affected her ability to learn successfully, but she would like an opportunity to change her major and continue with training. Her lack of attendance stemmed from personal health issues and her son's serious accident. She did not intend to withdraw from training. (Exhibit 9).

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. 20 C.F.R. 617.1, et seq.

The regulations provide for income benefits (TRA), as well as classroom training benefits (TAA). The regulations provide for TRA benefits in Subpart B of 20 CFR 617, i.e. 20 CFR 617.10 through 20 CFR 617.19. The legal basis for the decision under appeal in this case is found in this subpart.

Classroom training benefits are provided in Subpart C of the regulation (Reemployment Services), i.e. 20 CFR 617.20 through 20 CFR 617.29.

Ms. Anderson testified correctly that the attendance requirement and accompanying definition from one section of the regulation was applied to an action to enforce another section of the regulation. The regulation does not provide authority for this interpretation. Therefore, Ms. Anderson's suggestion, that the claimant be allowed to return to her training program and request more time and a change of her major area of study, is well taken.

DECISION

Iowa Workforce Development's decision dated August 23, 2010, terminating the claimant's classroom training for lack of attendance is REVERSED. The Department shall allow the claimant to return to the training and request more time for completion. The Department shall take any additional steps necessary to implement this decision.

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