

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

Appeal Number: 08-IWDUI-064
OC: 10/28/07
Claimant: Appellant (1-if affirmed, 2-reversed)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

DENNIS J PROVENZANO
1379 555TH AVENUE
LOVILLA IA 50150-8709

IOWA WORKFORCE DEVELOPMENT
CAROL PAULUS TRA/WIA ADMINISTRATOR
150 DES MOINES STREET
DES MOINES IA 50309-5563

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.

Jean M. Davis

(Administrative Law Judge)
May 30, 2008

(Decision Dated & Mailed)

20 CFR 617.22 – Approval of Training

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development Department decision dated December 12, 2007, which denied the claimant's assistance for training for attending the Hutton Valley School of Taxidermy.

A telephone conference hearing was scheduled and held on May 19, 2008, pursuant to due notice. The claimant, and his witnesses, Jo Ann Provenzano, and Roger Hutton, participated. Carol Paulus, TAA/WIA Administrator, participated for 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 effective October 28, 2007. The claimant's qualifying separation from Maytag occurred on October 26, 2007.

The claimant submitted a training plan dated November 15, 2007 requesting that he be approved to attend the Hutton Valley School of Taxidermy and the Des Moines Area Community College. The claimant was approved to attend the Des Moines Area Community College, for purposes of taking a course on Entrepreneurship, to begin on November 12, 2007 and end on December 21, 2007. However, his request for training at the Hutton Valley School of Taxidermy was denied in a letter dated December 12, 2007. The claimant filed an appeal of this decision.

The Department's decision to deny the claimant's request for taxidermy training stated that taxidermy training is not longer approved under the Trade Act program. The decision acknowledged that in the past, other affected workers had been approved for taxidermy training but that those persons had not achieved employment and suitable income from the training. As a result, taxidermy training was no longer approved under the program.

At the hearing, Ms. Paulus testified that the Department had previously approved five persons for taxidermy training, one of whom had attended the Hutton Valley School of Taxidermy. Ms. Paulus also stated that taxidermy was no longer approved due to a Department of Labor audit in which it was determined that suitable employment could not be derived from this training. Ms. Paulus clarified that the claimant met all other program requirements for the training program and that the adverse decision in this case was based solely upon a determination that there was no suitable employment available for the claimant upon completion of the taxidermy training.

Mr. Provenzano testified that he was first informed by the Department that his chosen program of retraining, i.e. taxidermy training, would be covered. Specifically, Mr. Provenzano testified that he was informed by Jane Repp, of the Department's Newton office, that the taxidermy training would be covered under the program. Upon further consultation with Ms. Repp, the claimant was later informed that taxidermy should be classified as an "artist and related workers" occupation and that when so classified, employability data established that taxidermy training in Iowa would result in suitable employment.

Mr. Provenzano also testified that one reason for selecting taxidermy training was because he had been told that the demand for skilled taxidermist in Iowa was high. Mr. Provenzano sought out the Hutton Valley School for his training because Roger Hutton, the proprietor of the school, told him that work would be available. Mr. Hutton testified that he has been teaching taxidermy in Iowa for approximately 6 years and that he had been approved by Iowa Workforce Development as an entity covered under the Trade Act retraining program. Mr. Hutton opined that sufficient work was available in Iowa for the claimant to achieve suitable employment as a taxidermist. Mr. Hutton also opined that the other persons who had completed his school under the Trade Act retraining program who were not employed in field had made career decisions for themselves based on factors other than suitable employment. In Mr. Hutton's opinion, suitable employment in taxidermy would be available for the claimant.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's request for training assistance to attend taxidermy school should be approved.

20 C.F.R. Part 617, Subpart C, Sec. 617.22 Approval of training.

This case is governed by reference to federal regulations setting forth requirements which must be

satisfied by persons seeking training assistance under the Trade Act of 1974. Ms. Paulus testified that the claimant satisfied all of the requirements except one. Thus, to resolve this appeal, it is necessary to focus on that requirement.

20 C.F.R. section 617.22 (a) provides that "[t]raining shall be approved for an adversely affected worker if the State agency determines that:...

(3) There is a reasonable expectation of employment following completion of such training."

This section further provides that given the job market expected to exist at the time the training program is completed, there is, a reasonable expectation that the worker will find a job using the skills acquired in the training program. The "reasonable expectation" component of this rule is evaluated under a fair and objective standard. 20 C.F.R. section 617.22(a)(3). The affected worker does not have to show employment opportunities offered or immediately available upon completion of the training.

Under the regulatory standard set forth above, the applicant need only establish a reasonable expectation that he/she will find a job using the skills acquired during the training. Under the facts of this record, Mr. Provenzano has satisfied this requirement. Mr. Hutton testified that suitable employment would be available for Mr. Provenzano following completion of the program. In addition, Mr. Hutton testified to the demand for taxidermist in Iowa. Mr. Provenzano also supplied information he obtained from Ms. Repp establishing that when taxidermy was properly classified as artists and related workers, employability data supported the conclusion that there was a reasonable expectation of employment using the skills acquired in the training.

The administrative law judge concludes that the department's decision of December 12, 2007 should be reversed.

DECISION:

The decision of the representative dated December 12, 2007, is REVERSED. The claimant's request for training assistance as to the taxidermy school is Approved.

jmd