

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

KARLA NEESE
819 FAIR MEADOW DRIVE
WEBSTER CITY, IA 50595

IOWA WORKFORCE DEVELOPMENT
LINDSAY ANDERSON, TAA COORD.
430 EAST GRAND AVENUE
DES MOINES IA 50309

JOE WALSH, IWD

Appeal Number: 12IWDUI096

OC: 4/3/11

Claimant: Appellant (2)

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 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.

(Administrative Law Judge)

April 27, 2012

(Decision Dated & Mailed)

STATEMENT OF THE CASE

Karla Neese filed an appeal from a decision issued by Iowa Workforce Development (the Department) dated January 9, 2012. In this decision, the Department determined that Neese was not eligible for the Reemployment Trade Adjustment Assistance program because she was not age 50 at the time of her reemployment.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on March 5, 2012 to schedule a contested case hearing. A Notice of Telephone Hearing was issued on March 7, 2012. On March 23, 2012, a telephone appeal hearing was held before Administrative Law Judge Laura Lockard. Trade Adjustment Assistance (TAA) coordinator Lindsay Anderson represented the Department and presented testimony. The Department submitted Exhibits 1 through 9,

which were admitted into the record as evidence. Appellant Karla Neese appeared and presented testimony.

ISSUE

Whether the Department correctly determined that the Appellant was ineligible for benefits under the Reemployment Trade Adjustment Assistance program.

FINDINGS OF FACT

Karla Neese was employed by Electrolux in Webster City, Iowa beginning in 2007. Neese was laid off because of lack of work in April, 2011. (Exh. 1-1).

Neese's date of birth is November 5, 1961. (Exh. 2-2). She turned 50 years old on November 5, 2011.

On September 1, 2011, Neese began working full-time at First State Bank. (Exh. 2-1). The wage she earned at First State Bank was less than what she was making at Electrolux when she was laid off. (Exh. 9-2). She was 49 years old at the time she began her new employment. The Department administers a program that provides Reemployment Trade Adjustment Assistance (RTAA) benefits for workers who are eligible for benefits under the Trade Act of 1974; workers must be age 50 and over and have secured qualifying reemployment. The RTAA program is intended to make up some of the difference between the higher wage that a worker lost and lower-wage reemployment. (Anderson testimony).

Neese consulted with her local Workforce Development office after accepting the job with First Bank and a representative there suggested that since she was so close to turning 50 that she submit the application for RTAA benefits. (Neese testimony).

On November 28, 2011, the Department sent a letter to Neese approving her application for Reemployment Trade Adjustment Assistance (RTAA) benefits. (Exh. 3-1). Upon review, however, the Department determined that Neese was not eligible for RTAA benefits because she did not turn 50 until after the date upon which she became reemployed. The Department issued a revised decision on January 9, 2012. That decision indicated that Neese's application for RTAA benefits was denied because she was not 50 years old on September 1, 2011, the date of reemployment. (Exh. 4-1).

Neese appealed the decision denying her application for RTAA benefits. Neese indicated in her appeal letter that she understood based on conversations with personnel at her local Workforce Development office that she would be eligible for RTAA benefits when she turned 50 in November 5, 2011. (Exh. 9-2).

REASONING AND CONCLUSIONS OF LAW

The Trade Act of 1974 set up a benefit system for workers who become unemployed as a result of increased imports.¹ In order to qualify for benefits, a worker must have become totally or partially separated from qualifying employment because of a lack of work.² There are essentially two major types of benefits available under the Trade Act: trade adjustment assistance (TAA) benefits and trade readjustment allowances (TRA). TAA benefits pay for an approved training program, while TRA benefits provide a weekly cash payment – akin to unemployment insurance benefits – to individuals who are participating in an approved training program.³ Reemployment trade adjustment assistance (RTAA) benefits are available under the TAA program.

The statute establishing the RTAA program provides, regarding eligibility,

A worker in a group of workers described in subparagraph (A) may elect to receive benefits . . . if the worker –

- (i) is at least 50 years of age;
- (ii) earns not more than \$50,000 each year in wages from reemployment;
- (iii)(I) is employed on a full-time basis as defined by the law of the State in which the worker is employed and is not enrolled in a training program approved under section 2296 of this title; or
- (II) is employed at least 20 hours per week and is enrolled in a training program approved under section 2296 of this title; and
- (iv) is not employed at the firm from which the worker was separated.⁴

The duration of RTAA payments depends upon whether the worker has previously received trade readjustment allowance benefits. A worker who has not received TRA benefits is eligible for benefits for two years, beginning on either the date on which the worker exhausts all rights to unemployment insurance based on the separation from employment that is the basis of the certification or on the date the worker obtains reemployment, whichever is earlier.⁵

The United States Department of Labor has issued Training and Employment Guidance Letter (TEGL) No. 22-08, which addresses implementation of the RTAA benefits created by the 2009 amendments to the Trade Act of 1974. This guidance letter provides that to be eligible for RTAA benefits, an individual must “[b]e at least age 50 at time of reemployment.” (Exh. 6-3). The Department cited 20 C.F.R. 617.59 in arguing that it is required to follow the Department of Labor’s guidance letters, including TEGL 22-08, in implementing state Trade Act benefit programs. That regulation provides that before performing any functions under the Trade Act a state must execute an agreement with

¹ 20 C.F.R. 617.2.

² 20 C.F.R. 617.3(c).

³ 20 C.F.R. 617.11(a)(vii); 617.22. Individuals who receive a waiver of the training requirement may also be eligible to receive TRA benefits.

⁴ 19 U.S.C. § 2318(a)(3)(B) (2011).

⁵ 19 U.S.C. § 2318(a)(4) (2011).

the United States Secretary of Labor meeting the Act's requirements. Under this regulation, states are periodically monitored for compliance with these agreements.

The Department submitted Iowa's agreement, which provides that Iowa will comply with certain specifically enumerated guidance letters (not including 22-08) and with "other such program letters issued by the Department [of Labor] applicable to the TAA benefits and assistance for adversely affected workers covered under TAA certifications resulting from petitions filed before May 18, 2009." (Exh. 8-7, 8-8).

The question presented in this appeal is purely a legal one. There is no factual dispute; the parties agree that Neese began her employment with First State Bank in September, 2011, prior to turning 50 years old in November, 2011. The only question is whether the fact that she had not yet turned 50 years old prior to becoming reemployed precludes her from receiving RTAA benefits for qualified reemployment after turning 50. I note as well that there is no argument that Neese failed to meet any of the other eligibility requirements of the RTAA program; the only issue is her age at the time she became reemployed.

I do not find that the statute requires an applicant for RTAA benefits to have achieved the age of 50 prior to becoming reemployed. The statute certainly requires that in order to be eligible for benefits the applicant must be 50 years old, but there is no explicit requirement that the age be achieved prior to reemployment. The RTAA benefits are clearly intended to benefit older workers, but the time limitation of the duration of benefits is a safeguard against younger workers claiming RTAA benefits many years after they separated from employment that qualified them for benefits under the Trade Act. Bolstering this interpretation is the fact that there is nothing in the statute that precludes an individual from working for different employers during the time period that he or she is eligible for RTAA benefits. It would be a perverse result if Neese were ineligible for RTAA benefits during her employment at First State Bank, but were eligible for benefits if she separated from First State Bank and became reemployed elsewhere, having turned 50 years old in the meantime.

Neither party has cited to any federal regulations regarding eligibility for RTAA benefits, nor does it appear that any such regulations exist.

The Department argues here that it is bound by the guidance letter issued by the U.S. Department of Labor interpreting the federal statute to require that an RTAA applicant have achieved age 50 prior to reemployment. While it may well be true that the Department is bound by contract with the U.S. Department of Labor to follow the guidance letters issued by the federal agency in administering its Trade Act benefit programs, that contract does not supersede the applicable statute and regulations and it does not govern the decisionmaking process for purposes of this appeal.

Under Iowa's Administrative Procedure Act, judicial deference to agency interpretation is afforded only when the legislature has clearly vested the agency with discretion to interpret a statute.⁶ In this case, the Department is interpreting a provision of federal

⁶ See Iowa Code § 17A.19(11) (2011).

law. There is no deference to a state agency's interpretation of a provision of federal law.

DECISION

Iowa Workforce Development's decision dated January 9, 2012 is REVERSED. Karla Neese is eligible for RTAA benefits as of the date of her initial approval, November 28, 2011. The Department shall take any action necessary to implement this decision.

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