

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**DAVID WEAVER**  
**2838 SAMSON AVE.**  
**LEHIGH, IA 50557-7514**

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

JOE WALSH, IWD

**Appeal Number: 12IWDUI129**  
**OC: Unknown**  
**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, 4<sup>TH</sup> 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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May 31, 2012

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(Decision Dated & Mailed)

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## STATEMENT OF THE CASE

David Weaver filed an appeal from a decision issued by Iowa Workforce Development (the Department) dated January 24, 2012. In this decision, the Department terminated Weaver's Trade Act classroom training benefit.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals on March 21, 2012 to schedule a contested case hearing. A Notice of Telephone Hearing was issued on March 23, 2012 scheduling a hearing date of April 2, 2012. Prior to the date set for hearing, the Department requested and was granted a continuance. The hearing was continued to April 6, 2012. On that date, the parties convened for hearing. The Appellant had not yet received the exhibits that the Department mailed via overnight mail on April 3, 2012. A continuance was granted in order for the Appellant to review the exhibits prior to the hearing. On April 20, 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. Dislocated worker specialist Heidi Hofbauer also testified for the Department. The Department submitted Exhibits 1 through 20, which were admitted into the record as evidence. Appellant David Weaver appeared and presented testimony. Desiree Weaver, the Appellant's wife, also testified.

### **ISSUE**

Whether the Department correctly cancelled trade adjustment assistance benefits.

### **FINDINGS OF FACT**

David Weaver was employed by Electrolux in Webster City, Iowa beginning in 1988. Weaver was laid off because of lack of work in March, 2011. (Exh. 1-1).

In July, 2011, Weaver submitted a request for approval for a training program as a marine/motor sports technician at Hennepin Technical College in Eden Prairie, Minnesota. The anticipated duration of the program was from August, 2011 through August, 2013. The Department approved the training request. (Exh. 6-1, 6-2, 9-1).

In order for Weaver to receive the subsistence allowance he was permitted because of the distance between his home and his training program, he had to submit monthly documentation showing the days that he was in attendance at his training program. (Anderson testimony). In October, 2011, Weaver submitted an attendance form for September which was signed by his training instructor, Thomas Scholberg, on October 14, 2011. (Exh. 7-2).

On November 4, 2011, Weaver met with dislocated worker specialist Heidi Hofbauer at the workforce center in Fort Dodge, Iowa. Weaver brought in forms related to October training program attendance that related to both his Trade Act benefits and to National Emergency Grant (NEG) benefits. He submitted a variety of forms to Hofbauer, including an attendance sheet for his NEG benefits, which was signed by Scholberg, and a rent receipt related to his Trade Act benefits. Weaver brought the October Trade Act attendance sheet to submit, but Hofbauer noticed that his instructor had not signed the form and requested that Weaver have his instructor sign the form before turning it in. (Exh. 9-1; Hofbauer testimony).

In an envelope postmarked November 5, 2012, Weaver submitted his October Trade Act attendance form to the Trade Act office in Des Moines. His signature, with a date of October 31, 2011, appears at the top of the form. At the bottom of the form, in a space for signature of training instructor, there is a signature that reads "Tom E. Scholberg." There is no date written next to the space for the instructor's signature. (Exh. 8).

When the October attendance form was received in the Des Moines office, Department employee Stephanie Barrett called Weaver to inform him that he had not included a rent receipt, which was necessary for him to receive his subsistence allowance. Weaver informed Barrett that he turned the rent receipt in to Hofbauer on November 4 and that

Hofbauer had mailed it for him. Barrett sent Hofbauer an e-mail on November 8 asking whether she had the rent receipt. Hofbauer sent Barrett a return e-mail indicating that she made a copy of the rent receipt but did not submit it as the instructor forgot to sign the attendance form. Hofbauer indicated in her e-mail to Barrett that she instructed Weaver to send in the attendance form on Monday with the rent receipt. (Exh. 9-1).

After the e-mail exchange with Hofbauer, Barrett was curious about how Weaver had been able to get his instructor to sign the form within a day of discovering his signature was missing. Hofbauer compared the signatures on the September and October attendance forms. Based on the signature comparison and what Barrett considered a suspicious submission timeline, the Department determined that it was necessary to verify the instructor's signature. (Anderson testimony).

On November 9, 2011, Lindsay Anderson attempted to call Scholberg. She left a message at his office. Additionally, Anderson sent an e-mail to Scholberg requesting that he contact her regarding forms submitted for Trade Act benefits. (Exh. 9, 10). On November 30, 2011, Anderson called Scholberg again and was unable to reach him. (Exh. 9). On January 6, 2012, Anderson sent Scholberg a certified letter requesting that he verify: 1) whether Scholberg signed the October attendance form; and 2) whether Weaver attended classes as noted on the October attendance form. (Exh. 13-2).

On January 24, 2012, the Department received correspondence from Scholberg indicating that Weaver had attended classes on the dates indicated on the October attendance form. Scholberg did not indicate in his correspondence whether the signature on the October attendance form was his. (Exh. 13-5).

On the same date, the Department sent a letter to Weaver terminating his Trade Act classroom training benefit as of January 24, 2012. The letter states that the Department was unable to verify that Scholberg signed the October attendance form. (Exh. 13-1). Scholberg appealed the Department's decision terminating Trade Act benefits.

At hearing, Weaver testified that he was not feeling well when he met with Hofbauer on November 4. He also testified that the office was very busy and that he did not have Hofbauer's full attention during the time that he was at the office. Weaver stated that he got confused and thought that the October attendance form called for his instructor's name, rather than his signature. He acknowledged at hearing that Hofbauer pointed out that his instructor had not signed the October attendance form, but testified that in the ensuing confusion of filling out other documents at the workforce center, he inadvertently wrote his instructor's name on the attendance form. (Weaver testimony).

## **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.<sup>1</sup> In order to qualify for benefits, a worker must have become totally or partially separated from qualifying employment because of a lack of work.<sup>2</sup> 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.<sup>3</sup>

At issue here is the Department's decision to cancel the Appellant's TAA benefits based on its belief that the signature on the October attendance form is not the signature of Thomas Scholberg, the Appellant's training instructor. The Department asserted at hearing that it based its decision on 19 U.S.C. § 2315(b), which provides:

(b) False representation or nondisclosure of material fact

If a cooperating State agency, the Secretary, or a court of competent jurisdiction determines that an individual--

(1) knowingly has made, or caused another to make, a false statement or representation of a material fact, or

(2) knowingly has failed, or caused another to fail, to disclose a material fact,

and as a result of such false statement or representation, or of such nondisclosure, such individual has received any payment under this part to which the individual was not entitled, such individual shall, in addition to any other penalty provided by law, be ineligible for any further payments under this part.

As an initial note, there is no dispute regarding whether Weaver actually attended the training sessions shown on his October attendance form. Weaver's instructor verified that he was at the classes and the Department acknowledges that he was in attendance on the dates indicated. There is likewise no dispute regarding whether Weaver's instructor signed the form; Weaver acknowledges that he filled in the line on the October attendance form requesting the instructor's signature.

The case centers around whether Weaver knowing made a false statement or representation of a material fact and, if so, whether he received payment to which he was not entitled as a result of the false statement or representation. As to the first

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

<sup>2</sup> 20 C.F.R. 617.3(c).

<sup>3</sup> 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.

question, I find that Weaver did knowingly misrepresent a material fact; namely, he forged his instructor's signature on the October attendance form, knowing that it was his instructor's signature – not merely his name – that was required. Weaver testified that he became confused while at the workforce center in Fort Dodge on November 4 and inadvertently wrote his instructor's name on the October attendance form, believing that the form requested the instructor's name, rather than his signature.

After reviewing the documents in evidence, I do not find Weaver's testimony on this point credible. First, Scholberg's name on the October form is not simply printed; it appears as if the document has been signed. On this basis, I do not credit Weaver's testimony that he believed all that was required was the instructor's name. Additionally, the October attendance form contains both Weaver's signature and information that was hand-written on the form (i.e. address, social security number, name of training facility). The September attendance form likewise contains Weaver's signature and the same hand-written information. The signature purporting to be Scholberg's matches neither of Weaver's signatures nor any of the hand printing on either of the forms.<sup>4</sup> If Weaver were simply confused, as he testified, it stands to reason that his writing of Scholberg's name on the October form would correlate somewhat with either the printing or signatures on the September and October forms. Instead, Scholberg's name much more closely matches Scholberg's signature from the September form. On this basis, I conclude that Weaver intentionally signed Scholberg's name in an attempt to make it appear as if Scholberg had signed the attendance form.

In order to terminate benefits on the basis of a material misrepresentation, however, there must be a showing that the recipient received payment to which he or she was not entitled. The evidence here does not establish that Weaver received any payment to which he was not entitled. Weaver attended the classes indicated on the October, 2011 attendance form. While the signature on the form was not authentic, the form itself did not contain any erroneous information. Weaver did not misrepresent his attendance on the form. That form, along with other documents, including Weaver's rent receipt, formed the basis for the October benefits that Weaver received. Because Weaver did not receive any benefits to which he was not entitled, the Department's decision terminating his Trade Act benefits was in error.

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<sup>4</sup> Weaver's signature is clearly not the same on both the September and October documents. Based on Weaver's wife's testimony that she often helps him with his Trade Act paperwork, I assume that one of the signatures is hers and one is Weaver's. This discrepancy is only relevant in that neither of those signatures match the October signature purporting to be Scholberg's.

**DECISION**

Iowa Workforce Development's decision dated January 24, 2012 is REVERSED. David Weaver remains eligible for trade adjustment assistance benefits. The Department shall take any action necessary to implement this decision.

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