IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

TIAYU R HAGE Claimant **IOWA WORKFORCE DEVELOPMENT** **TRADE ACT** Employer	**APPEAL 19A-UI-04013-CL-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 08/26/18** **Claimant: Appellant (1)**

19 U.S.C. §§ 2271-2331 – Trade Act of 1974
20 C.F.R. Part 617 – Trade Adjustment Assistance

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 14, 2019, decision that denied her April 29, 2019, request to amend her training plan under the Trade Act. The parties were properly notified about the hearing. A telephone hearing was held on June 14, 2019. Claimant participated. Employer participated through program coordinator Bill Marquess. Jason Rude and Molly VanWagner observed. Claimant's Exhibit 1 was received. Iowa Workforce Development's Exhibits A through S were received.

ISSUE:

Is the claimant eligible for benefits under the Trade Act?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On August 11, 2017, claimant applied for benefits provided for pursuant to the Trade Act. Claimant sought to complete the registered nurse program at Kirkwood Community College. The Trade Department of Iowa Workforce Development (hereafter Trade Department) approved claimant's application. Claimant's approved training plan ran from August 21, 2017, through December 14, 2018, which is 68 weeks.

On November 15, 2017, claimant applied to amend her training plan to extend the end date until May 11, 2019. The Trade Department approved the amendment, extending the training plan to 89 weeks.

On August 22, 2018, claimant applied to amend her training plan to extend the end date until August 9, 2019. The Trade Department approved the amendment, which extended the training plan to 102 weeks.

Claimant struggled academically during the fall 2018 semester because of health issues. Claimant received a C in Foundations of Nursing, a C- in Pharmacology II, and a C+ in Care of the Growing Family. Kirkwood Community College requires students to receive a B- or higher in

these classes in order to continue in its nursing program, and claimant had already taken at least one of the classes previously and received a C.

On January 8, 2019, claimant received a letter from Kirkwood Community College stating it was "exiting" her from the nursing program due to her academic performance during fall 2018.[1] Claimant was informed that she could reapply to the program in two years.

At that point, since Kirkwood Community College was no longer an option, claimant began investigating options for transferring to a different nursing program. Claimant determined Mercy College of Health and Sciences would be the best option.

Meanwhile, claimant began attending part-time classes at Kirkwood Community College during spring semester 2019. Claimant's caseworker, Shane Greve, was aware she was attending part-time classes during spring 2019 semester. Claimant took seven credit hours of pre-requisite classes that were needed in order to enter the nursing program at Mercy. Claimant paid for the tuition herself with student loans.

The Trade Department has an internal policy of allowing claimants attending training paid for under the Trade Act to take a leave of absence from the training. The Trade Department typically only approves a leave of absence for one term in the situation where a claimant cannot attend school at all during the term for a good cause reason. The leave of absence application process was informal and accomplished via email during the January 2019 timeframe.

On January 11, 2019, claimant sent an email to the Trade Department requesting a leave of absence from the Trade program for spring semester 2019. Claimant stated in her email that based on the necessity for a medical procedure, she did not believe she was going to be able to take a full load of classes. Claimant requested to return to the Trade program in summer 2019. This email was not received due to an invalid email address, but it was forwarded again and received on January 28, 2019.

On January 30, 2019, workforce program coordinator Nina Gotta sent an email to case manager Greve stating she needed to know whether claimant would need to amend her training plan and whether she would be able to complete the plan within the 130 weeks with the new amendment.

On February 1, 2019, case manager Greve sent workforce program coordinator Gotta an email stating that he was working on an application for an amendment with claimant and would submit it when complete.

Around February 4, 2019, claimant sent an email to caseworker Greve asking whether she had been approved for the leave of absence. Caseworker Greve sent the inquiry on to workforce program coordinator Gotta. Gotta responded that she was waiting on the application for amendment to determine whether claimant would be able to finish the training plan within 130 weeks.

Greve sent an email stating:

> Part of her amendment is not counting weeks of her leave of absence which she wanted to begin January 14th. She is concerned that Trade is covering this semester and she didn't want it to as she is in transition to a new school which would be her only option to have her training completed in 130 weeks.

[1] At this time, claimant stopped filing for her weekly Trade Readjustment Allowance. Therefore, any potential overpayment of TRA benefits is not at issue in this case.

Gotta responded:

> We only count the weeks that she is in school.

Gotta also sent an email to claimant and Greve asking if the leave was for a medical reason why claimant was planning to change schools.

Claimant was copied on the emails between Greve and Gotta.

Later that day, claimant sent an email only to Greve giving a synopsis of how and why she had been exited from Kirkwood Community College's nursing program and was planning to transfer to Mercy. Greve did not forward the email to Gotta.

On March 25, 2019, workforce advisor Jonathan Lochman sent claimant a request for a 60-day progress report on her training program. Claimant forwarded the request to Greve asking why she was receiving the request if she was on a leave of absence. Greve sent an email to Lochman stating that claimant was on leave and anticipated returning to the program in fall 2019. Claimant and workforce program coordinator Gotta were copied on the emails.

On April 3, 2019, Gotta responded to Greve:

> We never received the information on this request. I see with her 60 day notice she wants to extend her leave again. Trade needs some justification on this. We need to know the plan for this as soon as possible. Will she have enough weeks left to finish and what classes are left to take on this training.

Greve responded to Gotta:

> I believe her plan is to complete her amendment to change her school to Mercy College of Health Sciences in Des Moines because it is a 12 month accelerated program and she has family that lives out there that she can stay with during the week. Right now we are waiting on an official first term schedule from Mercy before we send in the amendment otherwise I would have sent it already.

Gotta then expressed her doubt that claimant's proposed amendment could be approved. Gotta asked Greve again to send in the application for amendment. Greve stated that he gave claimant a few things to work on a few weeks ago and was waiting for her to complete them.

On April 29, 2019, claimant submitted her application to amend her training program. Claimant applied to attend school at Mercy College of Health Sciences from August 26, 2019, through August 15, 2020, which extended her training plan to 155 weeks, if a leave of absence was not granted. Claimant noted in her application that she would need to take two prerequisite courses during the summer to start the nursing program in August 2019. Claimant proposed paying for the classes herself. Mercy does not accept credits for core nursing classes from other schools, so claimant will be required to repeat the core nursing classes she has already passed at Kirkwood Community College in order to complete the program at Mercy.

On May 14, 2019, the Trade Department denied claimant's request to amend her training plan on the basis that the plan would exceed the 130-week training maximum, claimant was not qualified to complete the proposed training, and because claimant paid for the training during the spring 2019 term out of her own pocket. The letter voided the training plan as of May 14, 2019.

REASONING AND CONCLUSIONS OF LAW:

Workers who are laid off for reasons determined to have been related to international trade may qualify for certain benefits under the Trade Act of 1974, as amended in 2002, 2011, and 2015. 19 U.S.C. §§ 2271-2331. The benefits include income benefits paid while attending training ("trade readjustment allowance" or "TRA benefits"), a job search allowance, relocation allowances, and training benefits ("TAA benefits"). See 19 U.S.C. §§ 2291-2294 (TRA benefits); § 2297 (job search allowance); § 2298 (relocation allowance); § 2296 (training).

Cooperating state agencies (CSAs), such as Iowa Workforce Development, administer Trade Act benefits on behalf of the United States Department of Labor. There are limitations on what training programs stage agencies can approve.

At issue here is the Trade Adjustment Assistance (TAA) classroom training benefits and whether claimant's April 29, 2019, application to amend her training plan for TAA benefits should be approved.

Is claimant qualified to undertake the training?

In considering the application, the first issue is whether claimant is qualified to undertake and complete the training.

In order to be eligible for the classroom training benefits, the claimant must show there is no suitable employment available for her, she would benefit from appropriate training, there is a reasonable expectation of employment following completion of such training, the training is reasonably available, the claimant is qualified to undertake and complete such training, and the training is suitable for claimant and available at a reasonable cost. 19 § U.S.C. 2296(a)(1). Upon approval, the claimant is entitled to have payments of the costs of the training paid on her behalf.

As noted above, a claimant must be qualified to undertake and complete the proposed training. 20 C.F.R. § 617.22(a)(5)(i) provides:

> **(a)** ***Conditions for approval.*** Training shall be approved for an adversely affected worker if the State agency determines that:
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> **(5)*The worker is qualified to undertake and complete such training.***
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> **(i)** This emphasizes the worker's personal qualifications to undertake and complete approved training. Evaluation of the worker's personal qualifications must include the worker's physical and mental capabilities, educational background, work experience and financial resources, as adequate to undertake and complete the specific training program being considered.

Claimant has not established she is qualified to complete the training given her past academic performance. The claimant was "exited" out of the nursing program in which she was most recently enrolled. The regulation above requires the Trade Department to take into account the claimant's personal qualifications, which in this case includes her historical education performance. Claimant repeated some core nursing classes and was unable to obtain a grade higher than a C, even on her second try. There is not a reasonable expectation this would change when the class is repeated for a third time at Mercy.

Can claimant complete the training program within 130 weeks?

The second issue is whether claimant could complete the training in the mandated 130 weeks, assuming for purposes of argument that she is qualified to undertake and complete the training.

The United States Department of Labor issued *Operating Instructions for Implementing the Trade Adjustment Assistance Reauthorization Act of 2015 (TAARA 2015)*. [2] The instructions give a firm limitation on the length of approvable training.

The operating instructions state:

> **D.4. Length of Training**
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> As under the 2011 Act, Section 236 of the 2015 Act does not include a specific limitation on the length of an approvable training. However, consistent with the Operating Instructions for the 2009 Program and 2011 Program, we interpret the 2015 Act as allowing the CSA to approve a training program with a maximum length, during which training is conducted, of 130 weeks, which is the maximum number of payable weeks of income support (UI plus TRA). This limitation aligns the maximum durations of training and income support and reflects the fact that for most workers, the availability of income support is critical to the ability of the worker to complete a training program. However, most workers will not have a full 130 weeks of income support available at the beginning of training; rather, most workers will have used some weeks of income support, such as UI, before the first week in which training occurs. We interpret the 2015 Program as permitting approval of training extending beyond the weeks of TRA available to the individual worker, as described in Section D.5.1. of these Operating Instructions. However, the appropriate length of training will depend on individual circumstances, and Completion TRA is only available to workers whose training program will be completed within the eligibility period discussed in Section C.5.2. of these Operating Instructions.
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> **D.5.1. Qualifications to be Applied for Extended Training**
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> **Statute:** Section 236(a)(9)(B)(i) of the 2015 Act reads:
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> > (B)(i) In determining under paragraph (1)(E) whether a worker is qualified to undertake and complete training, the Secretary may approve training for a period longer than the worker's period of eligibility for trade readjustment allowances under

[2] The regulatory authority for administering and interpreting the Trade Act of 1974, as amended, is granted to the United States Secretary of Labor. 19 U.S.C. § 2320 ("The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this chapter.") The Secretary's regulations are found at 20 C.F.R. Part 617. The United States Code further authorizes the Secretary to enter into agreements with states to administer the Trade Act of 1974. 19 U.S.C. § 2311(a). When administering such laws the state agencies act as agents of the United States. 20 C.F.R. § 617.59(e). State agencies when so acting "shall apply the regulations in … part 617." 20 C.F.R. § 617.50(d). Furthermore, Iowa Code § 96.11 mandates that IWD "shall cooperate with the United States department of labor to the fullest extent consistent with the provisions of this chapter. . ." The federal rules require that the "Act and implementing regulations shall be construed so as to assure insofar as possible the uniform interpretation and application of the Act and this part 617 throughout the United States." 20 C.F.R. § 617.52. The administrative law judge is therefore generally bound by the Operating Instructions and Training and Employment Guidance Letters issued by the United States Department of Labor, in addition to the pertinent statutes and regulations.

> part I if the worker demonstrates a financial ability to complete the training after the expiration of the worker's period of eligibility for such trade readjustment allowances.
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> **Administration:** As under the 2011 Act, Section 236(a)(9)(B)(i) of the 2015 Act provides that, when determining under Section 236(a)(1)(E) whether the worker is qualified to undertake and complete training, the CSA may approve training for a longer period than the worker's period of eligibility of TRA, if the worker demonstrates the financial ability to complete the training after the expiration of the TRA eligibility period. This Section is consistent with 20 CFR 617.22(a)(5)(ii) and (iii), in permitting training approval where a worker's personal or family resources are adequate to complete training. This Section makes it possible for workers to have access to long-term training such as a two-year Associate's degree, a nursing certificate, or completion of a four-year degree if that four-year degree was previously initiated. CSAs must not limit training approvals to short-term programs, and must, where the worker requests it, consider approval of training for longer than the individual worker's available remaining weeks of income support. For example, delayed enrollment in training may result in the exhaustion of some Basic TRA when an adversely affected worker does not immediately enter training due to job search activities. **A training plan which will exceed 130 weeks may not be approved under the 2015 Program.** (emphasis added)

In this case, claimant was not granted a leave of absence during spring and summer 2019. The Trade Unit ultimately denied the request because claimant was not able to establish she could not attend school during that time period. In fact, claimant did attend school on a part-time basis. Thus, the duration of the proposed training program is from August 21, 2017, through August 15, 2020, which exceeds the 130 weeks that are allowed.

Can claimant use her own funds to pay for part of the training program?

The final issue is whether claimant is allowed to use her own funds, whether personal or obtained through financial aid, to pay for part of the proposed training.

During the hearing, claimant repeatedly referenced the fact that she was confused throughout the spring semester as to whether her leave of absence had been approved. In fact, the Trade Department did not approve the request for a leave of absence at any point. This could have been communicated to claimant more clearly. But even assuming it had been approved or that it could be approved retroactively, claimant's proposed training plan would necessitate that she pay for part of her own training. This is not allowed under the Trade Act.

19 § U.S.C. 2296(a)(7)(C) provides:

> (a) In general
>
> (7) The Secretary shall not approve a training program if—
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> (C) such plan or program requires the worker to reimburse the plan or program from funds provided under this part, or from wages paid under such training program, for any portion of the costs of such training program paid under the plan or program.

20 C.F.R. 617.25(C) provides:

> (i)*In general.* Paragraph (7) of section 236(a) of the Act provides that a training program shall not be approved under the Act if -
>
> (A) all or a portion of the costs of such training program are paid under any nongovernmental plan or program,

(B) the adversely affected worker has a right to obtain training or funds for training under such plan or program, and

(C) such plan or program requires the worker to reimburse the plan or program from funds provided under the Act, or from wages paid under such training program, for any portion of the costs of such training program paid under the plan or program.

(ii)*Application.* Paragraph (7) of section 236(a), which is implemented in paragraph (b)(5) of this section, reinforces the prohibition in § 617.22(h) against approval of a training program under subpart C of this part if the worker is required to pay a fee or tuition. The provisions of paragraph (b) and paragraph (h) of this section shall be given effect as prohibiting the approval under subpart C of this part of any training program if the worker would be requested or required, at any time or under any circumstances, to pay any of the costs of a training program, however small, from any TAA funds given to the worker or from any other funds belonging to the worker from any source whatever. Aside from this stringent limitation, however, paragraph (7) of section 236(a) of the Act implicitly authorizes training approved under this subpart C to be wholly or partly funded from nongovernmental (*i.e.*, employer, union or other private) sources.

Even if the weeks claimant took part-time classes during spring and summer 2019 are not included in the 130-week calculation, claimant's training plan also necessitates her paying for part of her own tuition. In order to enter the nursing program at Mercy in fall 2019, claimant must complete the prerequisites taken in spring and summer 2019. Claimant does not want those classes paid for by the Trade Act and instead wants to pay for them out of her own pocket, but that is explicitly prohibited by the sections of law cited above.

DECISION:

The May 14, 2019, decision denying the April 29, 2019, application for amendment to claimant's training plan is affirmed. Claimant is not eligible for Trade Act benefits effective May 14, 2019.

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Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

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