

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRADARIE DJEUGANG
Claimant

APPEAL 18A-UI-01577-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWAWORKFORCE DEVELOPMENT

OC: 07/16/17
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 January 25, 2018, decision that denied claimant's request for classroom training benefits under the Trade Act. The parties were properly notified about the hearing. A telephone hearing was held on February 27, 2018. Claimant participated. Iowa Workforce Development participated through Administrative Assistant II Sandra Dostal, WIOA Workforce Consultant Mike Rose, and TRA Benefit Coordinator Janae Carter. Unemployment Insurance Manager Kelley Hauschildt observed. Exhibits A through F were received into the record.

ISSUE:

Is claimant eligible to receive classroom training benefits under the Trade Act?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was separated from employment for trade related reasons and Petition 92400 was certified to allow claimant to be eligible for benefits under the Trade Act.

In August 2017, claimant attended a meeting with an Iowa Workforce Development representative about his potential eligibility for Trade Act benefits. Claimant was given a handbook stating that an application for classroom training benefits must be submitted before training commenced in order for the costs of training to be paid for.

On October 25, 2017, WIOA Workforce Consultant Mike Rose was assigned to work with claimant in applying for Trade Act benefits. His application took longer than normal because claimant's proposed training plan involved attending two schools and transferring credits. Claimant initially proposed a timeline that did not seem realistic after looking at his degree audit. Rose directed claimant to seek more information from the schools to learn for certain which credits would transfer. Throughout the process, Rose told claimant he was concerned about whether he could complete the training plan in 130 weeks, as is required. Rose is located in

Cedar Rapids and not in Iowa City. Rose met with claimant by appointment and gave him the paperwork on a piecemeal basis and would set another appointment two weeks later.

Claimant was given the Request for Training Approval and Allowances for the first time on January 4, 2018. Claimant expressed concern about being able to submit the application in a timely manner as he would need to have the document approved and signed by individuals at Kirkwood Community College and the University of Iowa, and it was winter break. Claimant needed to get a referral through Kirkwood in order to meet with the representative from the University of Iowa. Rose told claimant he shouldn't wait for his advisor and he should contact the transfer office with Kirkwood Community College. Rose asked claimant if he wanted a follow-up appointment to go over the application before submission, but claimant declined and stated he would contact Rose when he was ready.

Claimant began attending classes at Kirkwood Community College on January 16, 2018.

On January 18, 2018, claimant submitted a Request for Training Approval and Allowances. The request did not include definite start and end dates, even though the application calls for those dates. The weeks claimant would actually participate in training are not clear from reading the application.

On January 25, 2018, Iowa Workforce Development issued a decision denying claimant's application for classroom training benefits based on an untimely and incomplete application.

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. §§ 2271-2331.¹ 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).

This case involves classroom training benefits or "TAA" benefits. To receiving training paid for under the program, a claimant must establish no suitable employment is available, he would benefit from appropriate training, there is a reasonable expectation of employment following completion of training, training is reasonably available, the claimant is qualified to undertake and complete such training, and training is available at a reasonable cost. 19 § U.S.C. 2296(a)(1).

¹ 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.

Section 617.22(a) of title 20 of the Code of Federal Regulations also lays out these requirements. Subsection 617.22(c) further states:

Previous approval of training under State law. Training previously approved for a worker under State law or other authority is not training approved under paragraph (a) of this section. Any such training may be approved under paragraph (a) of this section. Any such training may be approved under paragraph (a) of this section, if all of the requirements and limitations of paragraph (a) of this section and other provisions of Subpart C of this part are met, but such approval shall not be retroactive for any of the purposes of this Part 617, including payment of the costs of the training and payment of TRA to the worker participating in the training.

In this case, claimant did not submit his application for the training to be paid for under the Trade Act until *after* the training commenced. As noted in the regulations, approval cannot be retroactive for the costs of training. Claimant was aware he was required to apply for the training prior to its commencement if he was seeking for the training to be paid for under the Trade Act, as he received a handbook stating this when he first learned of the benefits.

Thus, the next issue is whether the deadline and/or prohibition on retroactive benefits can be waived. Under the current regulations, states are not allowed to apply their own good cause waiver of deadlines. 20 C.F.R. § 617.50(d). Although a waiver for good cause of time limitations had been adopted under Federal law, it is only applicable to time limitations with respect to “an application for a trade readjustment allowance or enrollment in training.” 19 U.S.C. § 2294(b). In this case, the issue is whether claimant’s application for classroom training (or TAA) benefits is timely—not whether the application for a trade readjustment allowance or his enrollment in training is timely.

While the statutory waiver provisions are not available in this case, the doctrine of equitable tolling can be considered, consistent with guidance provided at TEGL No. 08-11. Equitable tolling is a doctrine that permits the suspension of statutory and administrative deadlines where equity demands. Unlike many statutory provisions allowing for “good cause” waiver of time limits, or for late filing of any claim, equitable tolling of a deadline may only apply in egregious circumstances where an individual acted with due diligence to meet that deadline.

In this case, claimant did inform the agency that it would be difficult to meet the deadline due to winter break and took steps to meet with his school advisors. However, he did not schedule a follow-up appointment with the IWD representative, Mike Rose, and as a result the application he did eventually submit was incomplete as it did not contain definite start and end dates for his training and indicate which weeks he would actually participate in training. Even if the deadline were extended until the date of submission, the application is incomplete. Claimant has not established the deadline for him to apply for the classroom training benefits should be equitably tolled and therefore classroom training benefits are denied at this time.

DECISION:

The January 25, 2018, decision denying claimant classroom training benefits is affirmed. The claimant did not timely submit his application for classroom training benefits and those benefits are denied at this time. Claimant may submit a new application for the summer term.

Christine A. Louis
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Decision Dated and Mailed

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