

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**BRIAN L HUMSTON**  
Claimant

**APPEAL 18A-UI-00087-CL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT**

**OC: 07/30/17**  
**Claimant: Appellant (2)**

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 November 22, 2017, decision that denied claimant Trade Act benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 29, 2018. Claimant participated. Iowa Workforce Development participated through workforce state trade coordinator Nina Gotta and administrative assistant Sandra Dostal. Exhibits 1 through 6 were received.

**ISSUE:**

Is claimant eligible to receive benefits under the Trade Act?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant submitted a request for approval for training and allowances while in training under the Trade Act on May 15, 2017. His request identified his desired training as the Electronics Engineering Tech program through Kirkwood Community College from May 22, 2017, through May 10, 2019. Claimant certified that he understood that if the training request is approved by the State Trade Office, he would be required to document his training status at every 60-day interval of training. Iowa Workforce Development (IWD) found claimant was qualified to receive benefits. IWD approved claimant to receive benefits including tuition and related costs, transportation costs, and income benefits. He was assigned a case worker, Shane Greve.

Claimant began the training program in June 2017. IWD provided claimant with a blank 60-day Progress Report that was due on July 31, 2017. Claimant believed an advisor with the training institution he was attending needed to sign the progress report. Claimant had not been assigned an advisor, so he went to the Dean's office at Kirkwood Community College. No employee in the Dean's office would sign the progress report. Claimant informed Greve that the employees in the Dean's office would not sign the document. Greve suggested claimant ask the head of the department of engineering. Claimant explained that he was not taking any engineering classes yet, and that he was only taking core classes. Claimant explained he had not been assigned an advisor. Claimant asked Greve who he should ask to sign the progress report. Greve stated that he did not know. The progress report was not completed or submitted.

In September 2017, trade program coordinator Nina Gotta sent an email to Greve stating that claimant had not timely submitted his 60-day progress report and attaching another copy of the report. The email stated the report was due by September 15, 2017. Greve forwarded the documentation to claimant. Claimant again contacted Greve and informed him he did not have an advisor to sign the report. Greve asked claimant to sign a waiver stating IWD could have access to his academic records. Claimant did so. Claimant also approached an advisor in the engineering department and asked her to sign the progress report. The advisor refused to do so as claimant was not a member of the engineering department or taking engineering classes. Claimant went into his local office and spoke with Greve and informed him of the situation. Greve recommended claimant ask the head of the engineering department. Claimant reminded Greve he was not taking engineering classes. Claimant then went to the Dean's office again. The Dean's office directed him back to the engineering department. At that point, claimant gave up.

Claimant received one more email from Greve stating he needed to complete the progress report and return it as soon as possible. However, claimant did not know how to complete the progress report or who would or could assist him in doing so.

On November 3, 2017, workforce state trade coordinator Nina Gotta sent an email to claimant warning that his Trade Act benefits would end if he did not return the progress report by November 15, 2017. Claimant did not receive the email.

On November 22, 2017, Gotta sent claimant a letter stating his training program was terminated.

Claimant received Basic Trade Readjustment Allowance (TRA) benefits until the last week of August 2017, when he exhausted those benefits and began receiving Additional TRA benefits. Claimant has not exhausted Additional TRA benefits.

## **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.<sup>1</sup> 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). TRA benefits are generally broken into Basic TRA, Additional TRA and Completion TRA.

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<sup>1</sup> 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.

Basic TRA is payable up to 52 weeks, and is paid for qualifying individuals enrolled in an approved program or who have completed training or for whom training has been waived. 19 U.S.C. § 2291(a)(5). An individual is ineligible for benefits during weeks in which he or she has failed to participate in training. 19 U.S.C. § 2291(b).

Additional TRA is payable for those who have exhausted basic TRA and who are still in a TAA-approved training program. 19 U.S.C. § 2293(a)(3). Additional TRA is up to 65 additional weeks.

The Trade Adjustment Assistance Extension Act of 2011 (TAAEE) established a new category of TRA, referred to as "Completion TRA." *Trade Adjustment Assistance Extension Act of 2011* (Pub. L. 112-40). Completion TRA provides up to 13 extra weeks of income support, within a 20 week time period, after all other Unemployment and TRA monies have been exhausted, if five requirements are met. 19 U.S.C. § 2293(f). The requested weeks must be necessary to the individual to complete a training program that leads to a degree or credential; the individual must participate in training in each week; the individual must have substantially met the performance benchmarks established in the approved training plan; the individual must expect to make progress toward completion of the approved training; and the individual must be able to complete the training during the 13 weeks. *Id.*

The United States Department of Labor (DOL) issued Training and Employment Guidance Letter Number 10-11 for state agencies that explain how to administer the 2011 amendments. The DOL has also issued *Operating Instructions for Implementing the Trade Adjustment Assistance Reauthorization Act of 2015 (TAARA 2015)*. Both the TEGGL and Operating Instructions required state agencies to adopt performance benchmarks "to be able to monitor the worker's progress toward completing the approved training within the 130-week maximum duration of training. . . ." TEGGL 10-11 at p. 17; *Operating Instructions* at C.5.1. "The worker must substantially meet benchmarks to receive Completion TRA and, therefore, benchmarks must be included in all but short-term training plans." *Id.* The guidance further notes that:

These benchmarks are related to, but differ from, the requirement that a worker "participate in training" as a condition of eligibility for TRA. 'Participation in training' merely requires that a worker must attend scheduled classes, required events or otherwise follow the rules of the training program in accordance with the requirements documented by the training institution while benchmarks measure satisfactory progress of the worker who is participating in training. *Id.*

The guidance instructs state agencies on obtaining documentation of performance benchmarks:

For this review, a state may request the training vendor to provide documentation of the worker's satisfactory progress. The case manager may attest to the worker's satisfactory progress after consultation with the vendor and the worker. The state may request that the worker provide documentation of the worker's satisfactory progress towards meeting the training benchmarks from the vendor, such as through instructor attestations. *Id.*

Finally, the guidance instructs state agencies on the consequences for an individual who fails to meet training benchmarks:

Upon one substandard review of the established benchmarks, the worker will be given a warning, while two substandard reviews must result in a modification to the training plan, or the worker will no longer be eligible for Completion TRA. In this way, the training benchmarks may be used to provide early intervention that will provide the opportunity to determine whether the training plan in place is appropriate for the individual or would be prudent to revise.

In this case, claimant has not exhausted Additional TRA. To qualify for Additional TRA, claimant must continue to participate in an approved training program and there is no allegation claimant is not doing that.

The statutes and relevant guidance only give IWD authority to deny **Completion TRA benefits** or to modify a training plan when a claimant fails to meet performance benchmarks. Claimant is not receiving or even applying for Completion TRA at this point. He has not actually failed to meet performance benchmarks either. At this point, no progress report has been completed by the training institution he is attending—unsatisfactory or otherwise. Therefore, whether he is progressing satisfactorily is unknown.

IWD must monitor whether claimant is meeting his performance benchmarks, but based on the evidence provided, has made very little effort to do so. Claimant attempted numerous times to have the progress reports signed by the training institution he is attending and got nowhere. Claimant testified that he met with his case manager, Shane Greve, regarding the issue and asked for his help on numerous occasions. Based on the testimony provided by claimant, Greve did very little to help him. IWD did not present Greve as a witness and the witnesses who did testify had no information regarding Greve and his communication with claimant. Therefore, I find claimant's testimony on these facts credible as no contradictory evidence was offered. The DOL guidance specifically states that a state agency can contact the training institution directly to obtain a progress report or that a case manager can speak to the training institution directly to determine an individual's progress. That was not done or even attempted in this case.

In summary, claimant remains eligible for Trade Act benefits and IWD should assist claimant in obtaining completed progress reports from his training institution.

**DECISION:**

The November 22, 2017, decision denying claimant Trade Act benefits is reversed. Claimant is eligible for Trade Act benefits, as long as he otherwise meets the requirements to remain qualified. IWD should assist claimant in obtaining completed progress reports from the training institution he is attending.

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Christine A. Louis  
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Decision Dated and Mailed

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