

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

Appeal Number: 12IWDUI063
OC: 00/00/0000
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

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.

SHERRY GREGORY
308 BROADWAY ST.
WEBSTER CITY, IA 50595

STATE CLEARLY

IOWA WORKFORCE DEVELOPMENT
LINDSAY ANDERSON, TRA/TAA COORD.

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.

BEN ARATO, ATTORNEY
JOSEPH WALSH, IWD
CARLA DENNIS, IWD

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 23, 2012

(Decision Dated & Mailed)

20 C.F.R. § 617.22 –Trade Act

STATEMENT OF THE CASE

Claimant/Appellant Sherry Gregory submitted a request for classroom training under the Trade Act. Respondent Iowa Workforce Development denied the request, finding Gregory had not fulfilled the six conditions for training approval set forth in 20 C.F.R. section 617.22. Gregory appealed.

On February 9, 2012, IWD transferred the case to the Iowa Department of Inspections and Appeals to schedule a contested case hearing. A contested case hearing was scheduled for March 7, 2012. Gregory requested a continuance. On April 18, 2012, a contested case hearing was held before Administrative Law Judge Heather Palmer. Attorney Ben Arato represented Gregory. Gregory appeared and testified. Lindsay

Anderson appeared and testified on behalf of IWD. Exhibits 1 through 8 and A through J were admitted into the record.

ISSUE

Whether Iowa Workforce Development correctly denied Trade Adjustment Assistance Benefits to the appellant.

FINDINGS OF FACT

Gregory lost her job with Electrolux Home Products. She applied for benefits under the Trade Act to attend a Computer Support Technician program through New Horizons Computer Learning Center (“New Horizons”). Gregory reported the cost of the program was \$20,000. Upon completion of the program, Gregory would receive certificates in Microsoft Word, Excel, Outlook and Power Point, CompTIA A+, CompTIA Networking, and Microsoft Elective Exam. The New Horizons program could be completed in just over one year. The cost of the program is all-inclusive. Upon completion of the program Gregory would not receive a diploma.

Gregory submitted equivalent training offered through Iowa Central Community College (“Iowa Central”) in Fort Dodge and Hawkeye Community College (“Hawkeye”) in Waterloo. Gregory reported the comparable training through Iowa Central was in Computer Repair. Gregory stated the program would be four semesters, cost \$13,045, and she would receive a diploma. Gregory noted the comparable training through Hawkeye was in Computer Networking. The program was two semesters and Gregory would receive a diploma. Gregory noted the program did not include office skills. Anderson determined the programs through New Horizons and Iowa Central were within Gregory’s commuting area, but the program through Hawkeye was not.

IWD reviewed Gregory’s classroom training application. IWD denied her request for classroom training on July 31, 2011, finding Gregory failed to meet condition number six from 20 C.F.R. section 617.22 involving reasonable cost because training that is substantially similar in quality, content and results could be obtained from another provider at a lower cost within a similar timeframe. IWD informed Gregory she could submit additional information to IWD justifying how the quality, content and the results of the training she requested were superior to the less expensive training within her commuting area.

Gregory submitted additional information to IWD. Anderson determined the additional information did not support a finding that the New Horizons program is superior to the program through Iowa Central. Gregory’s background was in manufacturing and she wanted to move into a new field. Anderson concluded the letters of support Gregory submitted were from businesses sending current employees to training who were already working in the field, as opposed Gregory, who was not currently employed in the field. Anderson found the employers were not seeking to hire new employees with training from New Horizons, but rather, were seeking to expand the training of existing employees. Anderson again denied Gregory’s request on September 1, 2011, finding her request failed to satisfy condition six. Gregory appealed.

Gregory believes the program through New Horizons is not substantially similar to the program through Iowa Central because the program through Iowa Central does not offer the professionally-recognized certifications available through New Horizons. Gregory further believes the program through New Horizons is superior to that offered by Iowa Central. Anderson testified the programs through New Horizons and Iowa Central are substantially similar because the Computer Repair program prepares students for professionally-recognized certifications, including A+, N+ and possibly MCP, which is the Microsoft Certified Professional.

REASONING AND CONCLUSIONS OF LAW

The Trade Act of 1974 provides trade adjustment assistance (“TAA”) and trade readjustment allowances (“TRA”) to assist individuals who became unemployed as the result of increased imports to return to suitable employment.¹ To be eligible for benefits, a worker must be partially or totally separated from employed because of a lack of work in adversely affected employment.² TAA includes services and allowances provided for achieving reemployment of an adversely affected worker, including TRA, counseling, testing, training, placement, and other supportive services.³ TRA is a weekly allowance paid to an adversely affected worker.⁴ An adversely affected worker is an individual who is partially or totally separated from employment due to a lack of work.⁵ This case concerns a denial of an application for TAA classroom training.

Training benefits are available under the Trade Act for individuals participating in an approved training program.⁶ To qualify training assistance, IWD must find: (1) there is no suitable employment available for the adversely affected worker; (2) the worker would benefit from appropriate training; (3) there is a reasonable expectation of employment following completion of the training; (4) the training is reasonably available to the worker; (5) the worker is qualified to undertake and complete the training; and (6) the training is suitable for the worker and available at a reasonable cost.⁷ This case only involves the sixth condition, and specifically whether the training is available at a reasonable cost. Anderson agreed Gregory met the first five conditions and that the training is suitable for Gregory.

Under the federal regulations, “[a]vailable at a reasonable cost means that training may not be approved at one provider when, all costs being considered, training substantially similar in quality, content and results can be obtained from another provider at a lower cost within a similar time frame.”⁸ The New Horizons training is more expensive than the training offered through Iowa Central. Anderson compared the courses offered at both institutions and determined the training was substantially similar. Gregory does not want to obtain a diploma. She wants to obtain the professionally-recognized

¹ 20 C.F.R. § 617.2.

² *Id.* § 617.3(c).

³ *Id.* §§ 617.1(a), 617.3(mm).

⁴ *Id.* §§ 617.1(b), 617.3(nn).

⁵ *Id.* § 617.2(c).

⁶ *Id.* § 617.22.

⁷ *Id.* § 617.22(a)(1)-(6).

⁸ *Id.* § 617.22(a)(6)(ii).

certifications. In speaking with employers, Gregory has determined employers are looking for the certifications, as opposed to a diploma. Gregory contends the Iowa Central program is not substantially similar because it does not offer the professionally-recognized certification offered by New Horizons. The Iowa Central Catalogue Computer Repair program specifically references preparation for the industry certifications offered by New Horizons. Gregory agreed the CompTIA certifications are offered by CompTIA, not by New Horizons or Iowa Central. Training through New Horizons and Iowa Central would prepare her to take the certifications. Both programs are designed to prepare Gregory to obtain the professionally-recognized certifications.

While the Iowa Central program is longer than the New Horizons program, length of the program alone does not establish the programs are dissimilar.

Anderson testified she did not receive proof that the New Horizons training is superior to the training offered at Iowa Central. Gregory offered letters from Wells Fargo, the Iowa Clinic and Pella Corporation stating the training offered by New Horizons is “excellent” and “outstanding.” (Exhibit 7). While these letters support that the training offered by New Horizons is excellent and outstanding, Gregory did not offer evidence the training offered by New Horizons is superior to that offered by Iowa Central. There is no evidence of a wage disparity between graduates of the programs. There was no evidence presented that employers view the New Horizons program to be superior to the Iowa Central program. When substantially similar training is available through a program that is less expensive, IWD cannot approve the training. IWD’s decision should be affirmed.

DECISION

IWD’s decision dated September 1, 2011 is **AFFIRMED**. IWD shall take any steps necessary to implement this decision.

hlp