

The claimant was entitled to a good cause waiver of the application deadline for TRA benefits because she was not notified of the deadline until after it passed, and then she was provided with incomplete advice about seeking a waiver of the deadline and erroneous advice about when to file.

**Board of Review
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BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to deny federal Trade Readjustment Allowance (TRA) cash benefits under the Trade Act of 1974, as amended, 19 U.S.C. § 2101 et seq. (2015) (Trade Act)¹. We assume jurisdiction to review pursuant to our authority under 19 U.S.C. § 2311(e), 20 C.F.R. § 617.51(a), and G.L. c. 151A, § 41, and we reverse.

The claimant filed an unemployment claim, effective February 4, 2018, and became eligible for regular unemployment benefits. On May 11, 2018, the claimant was determined to be eligible to receive Trade Adjustment Assistance (TAA) benefits. However, her subsequent application for TRA cash benefits was denied in a determination rendered by the DUA on October 30, 2018. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by the claimant, a representative from the DUA TRA Unit, and a representative from the Department of Career Services Career Center, the review examiner affirmed the agency's initial determination and denied TRA cash benefits in a decision rendered on February 9, 2019. We accepted the claimant's application for review.

TRA benefits were denied after the review examiner concluded that the claimant had failed to meet the application deadline or seek an extension of the deadline. Thus, the claimant was not entitled to TRA benefits pursuant to 42 U.S.C. § 2291. After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we remanded the case to the review examiner to make further subsidiary findings of fact from the record. Thereafter, the review examiner issued her consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant is ineligible for TRA benefits because she missed the application deadline, is supported by substantial and credible evidence and is free from error of law, where the consolidated

¹ The Trade Adjustment Assistance Reauthorization Act of 2015 (TAARA 2015) (Pub. L. 114-27).

findings show that the agency failed to timely inform the claimant of the statutory deadline and did not provide the guidance necessary to obtain waivers of the deadline.

Findings of Fact

The review examiner's consolidated findings of fact and credibility assessment are set forth below in their entirety:

1. The claimant worked for [Employer A] (hereinafter, "the employer"), until separated from employment on September 8, 2017.
2. The employer was Trade Certified on March 15, 2016.
3. The claimant filed her claim for unemployment benefits on February 8, 2018, with an effective date of February 4, 2018. The claimant filed her claim on-line. (A message was placed on the claim that she may be eligible for TRA benefits and would have to go to the Career Center.)
4. On February 26, 2018, the claimant saw the notification that the company she worked for was Trade-Certified. The claimant was unaware that the company had been Trade-Certified prior to that date.
5. On February 27, 2018, the claimant went to the Career Center in [City A], Massachusetts. The claimant spoke with the Career Center representative. The claimant was informed that the Trade program would be discussed at the Career Center Seminar. The claimant was then signed up to attend the seminar on March 1, 2018.
6. The claimant went to the [City A] Career Center on March 1, 2018 and spoke with the Career Center representative. The claimant was asked if she had received a letter regarding Trade benefits, the claimant indicated that she had not received the letter. The claimant was then informed that she would receive further information at the training seminar. The claimant was then signed up to attend the training seminar on March 28, 2018.
7. The claimant's deadline date to submit the TAA application was March 10, 2018.
8. The claimant attended the training seminar on March 28, 2018.
9. The claimant attended the RESEA Review on April 4, 2018. At that time, the claimant informed the Career Center representative that she was interested in Trade benefits and was instructed to submit the paperwork for TAA.
10. On April 23, 2018, the claimant submitted the TAA application.

11. On May 10, 2018, the claimant met with the Career Center Representative who contacted the Trade Unit by telephone.
12. On May 11, 2018, the claimant received a letter from TRA indicating that she qualified for TAA benefits. Once approved for TAA benefits, the claimant was allowed to apply for TRA cash benefits. That letter provided information on the deadline date to apply for TRA Cash benefits of [sic] March 10, 2018. The claimant first became aware of the deadline date at that time. The May 11, 2018 letter, provided information indicating that the claimant could request a hearing within 10 days.
13. As soon as the claimant was determined to be eligible for TAA benefits, the application for TRA benefits, containing the deadline date information, was placed on the claimant's home page.
14. On May 17, 2018, the claimant contacted the Career Center Case Manager. The claimant inquired about whether she could proceed with the appeal or whether it was too late to apply for TRA benefits since she missed the March 10, 2018 deadline date.
15. On May 24, 2018, the claimant contacted the DUA to inquire about her hearing.
16. On or about May 31, 2018, the claimant again contacted DUA to inquire about her hearing and her call was transferred to the Trade Program Coordinator. The Trade Program Coordinator explained to the claimant what process she would need to follow to obtain TRA benefits. The claimant was instructed to get her training package together. The claimant was informed that, because she had missed the deadline date for training, she needed to apply for an Extenuating Circumstances Waiver.
17. Thereafter on June 2, 2018, the claimant reached out to the Career Center Case Manager by e-mail, but he was out of the office. The Career Center Case Manager responded on June 11, 2018, setting up a meeting with the claimant for June 14, 2018.
18. The claimant met with the Career Center Case Manager on June 14, 2018 and they discussed the training program. The Career Center Case Manager attempted to assist the claimant in getting into an approved training program. (The claimant was unable to start the chosen program as scheduled in July 2018, because the training vendor did not yet have TAA approval.)
19. The Career Center Case Manager was aware when first meeting with the claimant that she had missed the TRA application deadline date. The Career Center Case Manager did not assist the claimant in submitting a request for an Extenuating Circumstances (EC) Waiver to extend the TRA application

deadline date because he believed that it could not be submitted until the claimant's training program was TAA approved.

20. During the months of June 2018 and July 2018, the Massachusetts One Stop Employment System (MOSES) system was down, resulting in the Career Center Representatives having to travel to the DUA office in Boston to perform their data entry. (However, this did not impact the claimant's training.)
21. The claimant reached out to the Career Center Case Manager by e-mail indicating that her unemployment benefits were ending on September 8, 2018 and inquiring if she should apply for the TRA benefits online or wait for the waiver to apply.
22. On October 18, 2018, the Career Center Case Manager responded to the claimant by e-mail indicating that the claimant should apply for TRA benefits once her regular unemployment benefits exhausted.
23. The claimant submitted her application for TRA benefits on October 18, 2018.
24. On October 30, 2018, the claimant was issued a Notice of Disqualification, Trade Readjustment Allowance, indicating that "You have not met the requirements for Basic Trade Readjustment Allowance. In order to qualify for Trade Readjustment Allowance (TRA) benefits Section 231 of the Trade Act of 1974, as amended with the provisions of the Trade Adjustment Assistance Reauthorization Act of 2015, provides that to qualify for TRA, an adversely affected worker must be enrolled in an approved TAA training program or receive a Waiver of Training by the latest of: Twenty six (26) weeks following the week in which the worker group ([Employer A]) was certified OR Twenty six (26) weeks from the adversely affected worker's most recent qualifying separation from the Trade certified company. [Employer A] was Trade certified on 03/15/2016. Twenty-six weeks from the certification date of 03/15/2016 would have been 09/15/2018(sic). Your separation from [Employer A] was on 09/08/2017. Twenty-six weeks from your separation date of 09/08/2017 would have been 03/10/2018. Because you did not enroll in an approved TAA training program or obtain a training waiver by the deadline date(s) specific in federal law you are not eligible for Trade Readjustment Allowance (TRA) benefits." "Therefore, you are not eligible to receive Basic TRA benefits." The claimant filed a timely appeal to that determination.
25. Prior to the October 30, 2018 determination, the claimant was confused about the application process for TRA benefits, along with the process related to the Extenuating Circumstances (EC) Waiver. The claimant was still confused about those processes at the hearing (December 18, 2018).

26. It is unknown of [sic] the Extenuating Circumstances Waiver request was submitted to the Trade Unit on behalf of the claimant before the December 18, 2018 hearing date.

Credibility Assessment:

The claimant's testimony as to what her discussions with the Career Center representatives were on February 27th, March 1st and March 28th, 2018 were deemed to be credible, as she provided specific information, which was unrefuted as the other witnesses had no direct knowledge of those discussions.

The claimant's testimony as to [sic] her discussions with the Career Center Case Manager were on May 17, 2018 and June 14, 2018, along with an e-mail communication of June 2, 2018 was deemed to be credible, as she provided specific information, which was supported by the testimony of the Career Center Case Manager.

The Career Center Case Manager provided direct testimony that he had knowledge that the claimant had missed the TRA application deadline when he first met with the claimant and he did not assist with submitting a request for eventuating circumstances wavier because he believed it could not be submitted until the claimant's training program had TAA approval. His unrefuted direct testimony was deemed to be credible.

The claimant was confused as to the application process for TRA benefits and the Extenuating Circumstances Waiver as she testified in her direct testimony at the hearing. Further, the questions posed to the Career Center Case Manager throughout the process, support that such confusion on the part of the claimant existed.

Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner and determine: (1) whether the consolidated findings are supported by substantial and credible evidence; and (2) whether the review examiner's original conclusion is free from error of law. Upon such review, the Board adopts the review examiner's consolidated findings of fact and deems them to be supported by substantial and credible evidence. We further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented. However, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant is ineligible for TRA benefits because she missed the application deadline.

As a former employee of a trade-certified company, the claimant was entitled to participate in the trade program and apply for TAA benefits, which included, *inter alia*, training, employment and case management services, job search allowances, relocation allowances, as well as a TRA cash benefit. See U.S. Department of Labor Training and Employment Guidance Letter No. 18-17 (June 15, 2018), Attachment 3, p. 1 (hereinafter, "TEGL No. ___"). The benefits and rules for

administering this trade program are set forth under the Trade Act, as amended, as well as the U.S. Department of Labor’s regulations and program letters. Prominent among the requirements for administering the trade program is an affirmative obligation by the state agency to fully inform workers about the trade program. Under TAARA 2015, the statute provides, in relevant part, as follows:

The Secretary shall provide full information to workers about the benefit allowances, training, and other employment services available under this part and about the . . . application procedures, and the appropriate filing dates, for such allowances, training and services. The Secretary shall provide whatever assistance is necessary to enable groups of workers to prepare petitions or applications for program benefits. . . .

19 U.S.C. § 2275(a).

The assistance entails “disseminat[ing] benefit information that provides workers an accurate understanding of the TAA Program’s benefits and services in such a way that it is transparent to the worker applying for them.” TEGl No. 18-17, Attachment 3, p. 1. This did not happen in the present case.

As the review examiner found, the claimant remained confused about the application process for obtaining TRA benefits right up until the hearing in December, 2018. Consolidated Finding # 25. She was notified by the agency, in a letter dated May 11, 2018, that she qualified for TAA benefits. It stated that, once she was approved for TAA benefits, she would be allowed to apply for TRA cash benefits. The letter noted that the deadline to apply for the TRA cash benefits was March 10, 2018, which had already expired. *See* Consolidated Finding # 12. The claimant then contacted her Career Center Case Manager to ask if it was too late to apply because she had missed the deadline. *See* Consolidated Finding # 14. The claimant requested a hearing, and after calling to check on the status, was finally put in touch with the DUA Trade Program Coordinator, who advised her that because she missed the deadline, she would have to apply for an extenuating circumstances waiver.² Consolidated Finding # 16.

During the hearing, the DUA Trade Program Coordinator alluded to an additional “good cause waiver” that would have been available to extend the application deadline even further.³ However, there is nothing in the findings or the parties’ testimony to indicate that the claimant was informed about the opportunity to apply for this additional waiver when they spoke in May.

A “good cause waiver” is authorized under 19 U.S.C. § 2294, which provides as follows:

² This refers to an extension of the deadline to be enrolled in training by 45 days, if the agency determines there were extenuating circumstances that justify the extension. *See* 19 U.S.C. § 2291(a)(5)(A)(ii)(III). It is worth noting that even if the claimant had immediately obtained this extenuating circumstances waiver, the 45-day extension allowed under this waiver would simply have extended the March 10, 2018 TRA deadline to April 24, 2018, and her conversation with the DUA Trade Program Coordinator did not take place until a month later, on or about May 31, 2018. *See* Consolidated Finding # 16.

³ While not explicitly incorporated into the review examiner’s findings, this information is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. *See* Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

(b) Special Rule on Good Cause for Waiver of Time Limits or Late Filing of Claims

The Secretary shall establish procedures and criteria that allow for a waiver for good cause of the time limitations with respect to an application for a trade readjustment allowance or enrollment in training under this part.

Among the factors, which the Secretary of Labor has listed for state consideration of good cause are:

(1) Whether the worker acted in a manner that a reasonably prudent person would have acted under the same or similar circumstances.

(2) Whether the worker received timely notice of the need to act before the deadline passed.

...

(7) Whether the worker's failure to meet the deadline was because the worker reasonably relied on misleading, incomplete, or erroneous advice provided by the state.

(8) Whether the worker's failure to meet the deadline was because the state failed to perform its affirmative duty to provide advice reasonably necessary for the protection of the worker's entitlement to TRA.

TEGL No. 5-15, Change 1 (September 23, 2016), Attachment A, p. A-30.

We believe that, given the circumstances of this case, the claimant qualifies for the good-cause waiver of the time limits for applying for TRA benefits. The findings show that upon learning of her possible eligibility for TAA benefits, the claimant exercised her due diligence by promptly and repeatedly contacting the agency and following the guidance and instructions given to her by the various agency representatives. She visited her local Career Center and signed up for the March 1, 2018, seminar, where the Trade program was purportedly going to be discussed. *See Consolidated Findings ## 4 and 5.* At the March 1, 2018, seminar, she followed the instructions of a Career Center representative to sign up for a March 28, 2018, training seminar, which, she was told, would provide further information about Trade benefits. *See Consolidated Finding # 6.* She attended that training seminar as well as a RESEA Review on April 4, 2018, where she asked about Trade program benefits. *See Consolidated Findings ## 8 and 9.* Following instructions to submit a TAA application, she filed one on April 23, 2018, then followed up with a Career Center representative on May 10, 2018. *See Consolidated Findings ## 10 and 11.* The following day, the claimant received the letter containing the TRA application deadline, which had expired two months prior.

By June of 2018, despite her inquiry into filing a waiver of the application deadline, the claimant was mistakenly told that she had to wait until her training program was TAA-approved. *See*

Consolidated Finding # 19. Prior to the expiration of her regular unemployment benefits in September of 2018, the claimant inquired again as to whether she should apply for TRA benefits online or continue to wait for the waiver to apply. *See* Consolidated Finding # 21. This time, she was mistakenly told that she should apply for TRA benefits once her regular unemployment benefits exhausted. *See* Consolidated Findings ## 22 and 23.

Ultimately, the claimant's TRA application was denied, because the claimant filed it after the March 10, 2018, deadline without also seeking the extenuating circumstances and good cause waivers. *See* Consolidated Finding # 24.

We conclude, however, that the claimant's failure to follow the necessary steps to meet the deadline or seek such waivers was attributable to not receiving timely notice of the need to act before the deadline passed, to relying upon incomplete or erroneous advice provided by the state, and due to the state's failure to perform its affirmative duty to provide advice reasonably necessary to protect her entitlement to TRA. *See* UIPL No. 5-15, Change 1, Attachment A, C.2.1, factors 2, 7, and 8. Because the claimant acted in a manner that a reasonably prudent person would have acted under similar circumstances, she has met her burden to show that she is entitled to a good cause waiver of the time limits for applying for TRA benefits. *See Id.*, factor 1.

We, therefore, conclude as a matter of law that pursuant to 19 U.S.C. § 2294(b), the claimant may not be denied TRA benefits due to her failure to apply for TRA benefits by the statutory application deadline.

The review examiner's decision is reversed. The claimant is entitled to receive TRA benefits, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION – May 20, 2019



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, Esq. did not participate in this decision.

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS STATE DISTRICT
COURT OR TO THE BOSTON MUNICIPAL COURT
(See Section 42, Chapter 151A, General Laws Enclosed)**

The last day to appeal this decision to a Massachusetts District Court is thirty days from the mail date on the first page of this decision. If that thirtieth day falls on a Saturday, Sunday, or legal holiday, the last day to appeal this decision is the business day next following the thirtieth day.

To locate the nearest Massachusetts District Court, see:
www.mass.gov/courts/court-info/courthouses

Please be advised that fees for services rendered by an attorney or agent to a claimant in connection with an appeal to the Board of Review are not payable unless submitted to the Board of Review for approval, under G.L. c. 151A, § 37.

AB/rh