

The DCS appropriately denied an extension of a successfully completed, TAA-approved CDL training course, simply to cover the few weeks while the claimant practiced his driving skills and waited for the state to schedule his CDL test.

**Board of Review
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Issue ID: TAA-18-003

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 an extension of an approved training program under the federal Trade Adjustment Assistance (TAA) program.¹ We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

The claimant opened an unemployment claim, effective August 28, 2016, and became eligible for regular unemployment benefits. On September 20, 2016, the claimant was determined eligible to receive TAA benefits, and he was subsequently approved to participate in a training program from January 8, 2018, through February 9, 2018. However, in a determination issued on March 14, 2018, the Department of Career Services Trade Unit (DCS) denied his request to extend that training program. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by both the claimant and a DCS representative, the review examiner affirmed the agency's initial determination and denied the training program extension in a decision rendered on May 10, 2018. We accepted the claimant's application for review.

The review examiner denied a training extension because she concluded that the claimant had requested the extension retroactively, and, thus, approval could not be granted pursuant to 20 C.F.R. § 617.22(6)(c). Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal.

The issue before the Board is whether the review examiner's decision to deny approval for an extension of the claimant's CDL training course is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

¹ The TAA benefits at issue were available pursuant to the Trade Adjustment Assistance Reauthorization Act of 2015 (TAARA 2015) (Pub. L. 114-27).

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

1. On August 26, 2016, the claimant was laid off from his position as a solution prep technician from [Company A] a pharmaceutical company. The instant employer was approved for TAA/TRA benefits for its employees.
2. On September 20, 2016, the claimant applied for and was approved under the TAA/TRA program for training and he began research into what type of training he would be most suited to.
3. The claimant's first language is Polish and he successfully completed an English as a Second Language (ESL) course on December 15, 2017.
4. The claimant was approved to attend New England Tractor Trailer of Mass. Inc. (NETTTS) in the 160 (CDL-A) program where the goal was to gain certification in preparation to get a Commercial Driver's License (CDL). The course began on January 8, 2018 and the graduation date was February 9, 2018.
5. The claimant completed the class room training and received his certificate on February 9, 2018 from NETT[T]S.
6. In order to pass the CDL, the claimant had to be proficient in the areas of braking, inspection, maneuvering and the road test. At the end of the certification program (February 9, 2018), the claimant did not feel confident enough in his driving skills to pass the CDL, as he had never driven truck [sic] prior to this course.
7. The school allowed the claimant to continue to be trained in driving skills at NETTTS for no additional cost and he completed the driving training on March 9, 2018.
8. On February 8, 2018, a request was made on behalf of the claimant to the TAA/TRA unit to change his program with the school to a longer program to further his trucking training. The request stated:

(name) would like to do the NETTTS 540 hour Program this program is designed for a Graduate to become more marketable in the trucking industry he will learn everything you need to know about bills of lading' trip reports hazards materials pre-trip inspection standards and 250 hours yard training versus 120 for the present program he is in [sic].
9. The claimant's request was denied by the Trade Unit and was not appealed.

10. On March 7, 2018, a request was submitted to the Trade Unit on behalf of the claimant requesting an extension of his previously approved training to an end date of March 9, 2018 rather than his completion date of February 9, 2018.
11. The claimant was requesting TAA/TRA benefits for the period that he continued to train as he was committed full time to this training and had no pay coming in.
12. On March 14, 2018, the Trade Unit sent the claimant the following determination:

The Department of Career Services (DCS) approved you to attend the Commercial Driver's License 160 (CDL-A) program at New England Tractor Trailer under the Trade Adjustment Assistance (TAA) program. Your approved training dates were January 8, 2018 through February 9, 2018.

On March 7, 2018, there was a request submitted to extend your training and end date through March 9, 2018. The reason for the extension request was due to scheduling delays for the Massachusetts CDL-A licensing test.

You successfully completed your training February 9, 2018 and are quailed [sic] to sit for CDL-A licensing in Massachusetts. TAA cannot extend training dates due to scheduling issues for licensing tests as the training approval is for the classroom training time only.

Also, TAA cannot retroactively approve requests made after the training end date.

According to the Federal Regulations which govern the Trade Act of 1974 as amended (20 CFR 617.22 (6) (c)):

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.

Therefore, your request to extend your training program has been **denied**.

Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the findings are supported by substantial and credible evidence; and (2) whether the review examiner's ultimate conclusion is free from error of law. Upon such review, the Board adopts the review examiner's findings of fact and deems them to be supported by substantial and credible evidence. As discussed more fully below, we agree with the review examiner's legal conclusion to uphold the determination denying a training extension, but we do so on other grounds.

At issue in this case is whether the DCS improperly denied the claimant's request to approve an extension of his training program beyond the original program end date. Because the criteria for approving training remained unchanged under the statute, TAARA 2015, the existing regulations under 20 C.F.R. § 617.22 still govern the administration of training approval criteria.²

In rendering her decision, the review examiner relied upon a provision under 20 C.F.R. § 617.22(c), which states that approval for training, including the payment of the costs of the training and payment of a trade readjustment allowance (TRA), shall not be retroactive. The original training program end date for this CDL course was February 9, 2018. *See* Finding of Fact # 4. Finding of Fact # 22 states that the claimant's request for an extension of his approved CDL training course was not submitted to the DCS until March 7, 2018. Since the extension request was not submitted to DCS until after the course ended, any approval would have had to be retroactive, and this is not permitted under the regulation.

However, Exhibit # 4 contains a note, dated February 8, 2018, from the DCS representative who was working with the claimant, which states, "[the claimant] is trying to get an extension on his training".³ Because it appears that the claimant sought assistance from the DCS in getting an extension *before* his course ended, we hesitate to disqualify him on the ground that he sought retroactive approval, even if the formal request was not submitted to DCS until later.

Instead, we affirm the decision to deny the extension because we believe DCS appropriately concluded that the claimant did not need additional time to complete the approved course. The regulations grant to the state agency, here the DCS, the authority to determine the appropriateness of the length of training. 20 C.F.R. § 617.22(f). DCS had already approved the 160-hour CDL-A training program, which provided him with the certificate necessary to take the CDL licensure test. Finding of Fact # 4. Indeed, the claimant obtained that certificate on February 9, 2018. This 160-hour training program enabled the claimant to learn the curriculum and acquire the driving skills necessary to pass the test. Although the claimant did not feel confident yet in his driving skills at the end of the course, the school permitted him to continue practicing those at no additional cost. *See* Findings of Fact ## 6 and 7. Simply put, there was no need to authorize additional TAA benefits for further training.

Finding of Fact # 11 indicates that the real reason for the claimant's extension request was to continue the payment of TRA benefits during the gap between the end of the 160-hour CDL course and his CDL test. The claimant could only receive further TRA benefits while enrolled in approved training. *See* 19 U.S.C. § 2291 (a)(5)(A)(i).⁴ As the school explained, he needed the

² *See* U.S. Department of Labor Training and Employment Guidance Letter (TEGL) No. 5-15, Change 1 (Sept. 23, 2016), D.5 at p. A-51.

³ This entry in Exhibit # 4, page 7, while not explicitly incorporated into the review examiner's findings, 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).

⁴ After enrolling in this 160-hour CDL course, the claimant also had requested approval to change his training program to a longer 540-hour course with the same provider. DCS denied this request. This denial is not before us, as the claimant did not appeal that determination. *See* Finding of Fact # 8.

extension because the state was behind in its testing. *See* Finding of Fact # 12 and Exhibit # 4.⁵ However, the DCS had to consider 20 C.F.R. § 617.22(f)(1), which states, “The training shall be of suitable duration to achieve the desired skill level in the shortest possible time.” Since the claimant had already successfully completed his approved training course and obtained the credentials necessary to take the CDL test in 160 hours, we believe the DCS appropriately exercised its discretion not to pay further TAA (or TRA) benefits during the down period while the claimant waited for a test date, even if the claimant used that time to improve his driving skills.

We, therefore, conclude as a matter of law that the claimant was not entitled to an extension of TAA benefits pursuant to 20 C.F.R. § 617.22(f).

The review examiner’s decision is affirmed. The claimant is not entitled to an extension of his TAA approved training course beyond February 9, 2018.

BOSTON, MASSACHUSETTS
DATE OF DECISION - July 27, 2018



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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.

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⁵ In a note entry on March 7, 2018, the claimant’s trade counselor wrote the school’s response as to why the claimant’s course would end on 3-16-18, “[Claimant] is still in school because Massachusetts is behind in their testing.” This entry in Exhibit # 4 is also part of the unchallenged evidence in the record.