



THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
BOARD OF REVIEW

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BOARD OF REVIEW DECISION

BR-111865-TRA (Oct. 29, 2010) -- Both the Illinois Department of Employment Security and the Massachusetts DUA act under the Secretary of Labor's delegated authority to administer the Trade Act. Since the claimant's waiver application was submitted to the Illinois workforce agency before the statutory deadline, the claimant was entitled to a waiver even though Massachusetts did not receive the fax from Illinois until after the deadline.

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Division of Unemployment Assistance (DUA) to deny federal Trade Readjustment Allowance cash benefits (TRA benefits) under the Trade Act of 1974, as amended, 19 U.S.C. § 2101 et seq. (2002) ("Trade Act"), and its implementing regulations, 20 C.F.R. § 617 (1986). We have jurisdiction and review pursuant to our authority under 19 U.S.C. § 2311(d), 20 C.F.R. § 617.51(a), and G.L. c. 151A, § 41. We reverse.

The claimant was separated from a trade certified company in December, 2008. On July 8, 2009, the Massachusetts Division of Career Services' Trade Unit ("Massachusetts Trade Unit" or "Trade Unit") denied the claimant a waiver of the training requirement for TRA cash benefits, because the Massachusetts Trade Unit did not receive his request within the statutory deadlines. The claimant appealed that determination to the DUA hearings department. Following a hearing on the merits attended by both parties, the review examiner affirmed that denial in a decision rendered on October 21, 2009.

Our decision is based upon the claimant's appeal, the review examiner's decision, and the recorded testimony and evidence from the DUA hearing.

The issue on appeal is whether a worker may be denied a TRA training waiver where his application was submitted to another state's workforce agency on a timely basis, but the application did not reach the Massachusetts Trade Unit within the statutory deadline.

Findings of Fact

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

1. The claimant worked for a Massachusetts trade certified employer until he was laid-off on 12/18/08.
2. This Massachusetts employer was trade certified on 09/25/08.
3. After his lay-off the claimant immediately relocated from Massachusetts to Illinois.
4. On 01/02/09, the claimant filed an interstate claim for unemployment benefits.
5. In February 2009, the claimant contacted the TRA/TAA staff in Illinois and met with a councilor in Illinois to assist him through the process.
6. In February 2009, the claimant provided TRA application information, but the Illinois staff did not act on the application as it was set aside on someone's desk and it was never entered in to the system and no attempt was made to contact Massachusetts regarding the TRA application within the statutory deadlines (04/11/09 for TRA cash benefits). The claimant understood that the Illinois TRA staff was in contact with the Massachusetts TRA staff¹ and that no further action was required of the claimant.
7. On 02/19/09, the claimant completed a TAA waiver application in Illinois. The claimant understood that Massachusetts was the liable state and that Illinois would forward his waiver application to Massachusetts after Illinois had approved the waiver request.
8. In early March of 2009, prior to the 04/25/09 forty-five (45) day deadline, the TAA staff in Illinois sent the Massachusetts TAA staff a copy of the claimant's (approved in Illinois) waiver request and the Illinois equivalent to the Massachusetts Form 1066.
9. The 02/19/09 waiver request indicated that training is not appropriate because the worker possesses marketable skills and employment is likely. The requested waiver would extend from 02/19/09 to 03/20/09.

¹ The review examiner refers to the staff at the Massachusetts Trade Unit variably as "Massachusetts TRA staff" and "Massachusetts TAA staff."

10. For unknown reasons, the fax sent in early March of 2009 was never received by the TAA staff in Massachusetts. The fax machine used in Illinois does not issue a transmission receipt, but the sender testified that there was no indication of any problem with the fax being received.
11. Massachusetts TAA had no knowledge of the claimant until a second Form 1666 (Illinois equivalent) was submitted on 06/26/09 and approved the same day.
12. The claimant never entered any training program.
13. The claimant is seeking approval of his 02/19/09 waiver request which was denied in a letter dated 07/08/09. The denial letter noted that because the claimant had not yet been determined eligible for the Trade Programs in Massachusetts as of the dates of the requested waiver, the Trade Program is unable to grant the waiver and the request for waiver is denied. The 07/08/09 letter quoted The Trade Act of 1974 Section 617.22(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.”
14. The claimant requested a hearing on the training waiver denial.

Ruling of the Board

The Board adopts the review examiner’s findings of fact with the exceptions noted below.² In so doing, we deem them to be supported by substantial and credible evidence. However, we reach our own conclusions of law.

As an adversely affected worker of a trade-certified company, the claimant was eligible to apply for TRA benefits under 19 U.S.C. § 2291, which provided, in pertinent part, as follows:

Payment of a trade readjustment allowance shall be made to an adversely affected worker ... if the following conditions are met: ... (5) Such worker – (A)(i) is enrolled in a training program approved by the Secretary under section 2296(a) ... and (ii) the enrollment ... occurs no later than the latest of—

- (I) the last day of the 16th week after the worker’s most recent total separation from adversely affected employment which meets the requirements of paragraphs (1) and (2),

² Different dates appear in the findings of fact and underlying evidence for the claimant’s separation date (e.g., 12/18/08, 12/30/08), for the waiver application deadline (e.g., 4/11/09, 4/25/09), and for the six month waiver end date approved in Illinois (e.g., 3/20/09, 8/20/09). However, none of these discrepancies are material to our decision.

- (II) the last day of the 8th week after the week in which the Secretary issues a certification covering the worker,
- (III) 45 days after the later of the dates specified in subclause (I) or (II), if the Secretary determines there are extenuating circumstances that justify an extension in the enrollment period, or
- (IV) the last day of a period determined by the Secretary to be approved for enrollment after the termination of *a waiver issued pursuant to subsection (c) of this section*, . . . (emphasis added.)

Subsection (c) of 19 U.S.C. § 2291, provides, in relevant part, as follows:

(c) Waivers of training requirements

(1) Issuance of waivers. The Secretary may issue a written statement to an adversely affected worker waiving the requirement to be enrolled in training described in subsection (a)(5)(A) of this section if the Secretary determines that it is not feasible or appropriate for the worker, because of 1 or more of the following reasons: ...

(B) Marketable skills. The worker possesses marketable skills for suitable employment ... and there is a reasonable expectation of employment at equivalent wages in the foreseeable future.

It is undisputed that the claimant submitted the required waiver application to the Illinois workforce agency on February 19, 2009, well within the April, 2009 deadline; that the agency granted the claimant a six-month training waiver; and that the Illinois representative made efforts to transmit the completed application to the Massachusetts Trade Unit. Further, there is no dispute that the latter never received this waiver application until the April deadline had passed. When the Massachusetts Trade Unit finally obtained a copy in late June, they determined that the Trade Act regulations prohibited them from granting a waiver retroactively. However, there is no need to address the Trade Unit's authority to grant a waiver retroactively, as we do not view the claimant's waiver application to be late.

Although Massachusetts acted as the liable state for purposes of administering Trade Act benefits in this matter, it did so under the authority of the Secretary of the U.S. Department of Labor ("Secretary") as a cooperating state agency. Similarly, the Illinois Department of Employment Security accepted the claimant's Trade Act benefits application and processed the claimant's waiver request on behalf of the Secretary. See 19 U.S.C. § 2311, which authorizes the Secretary to enter into agreements with state workforce agencies and to delegate her duties to them as cooperating state agencies.

Under 19 U.S.C. § 2275(a), the Trade Act requires as follows:

... The Secretary shall provide whatever assistance is necessary to enable groups of workers to prepare ... applications for program benefits ... [and to] make every effort to insure that cooperating State agencies fully comply with the agreements entered into under section 2311(a)....

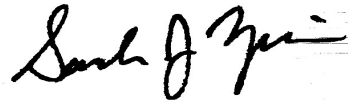
The claimant's completed application was submitted in a timely fashion to the Secretary through the Illinois Department of Employment Security, acting as the Secretary's cooperating state agency. Whether the Illinois agency forwarded this application timely to the Massachusetts Division of Career Services is irrelevant to its timeliness, because the application was complete and filed when it was submitted to the Illinois agency. However, because the application was not processed timely between the two state agencies, the claimant is entitled to be granted a waiver under 19 U.S.C. § 2291(c).

The review examiner's decision is reversed. The claimant is entitled to a waiver of the training requirement for TRA cash benefits.

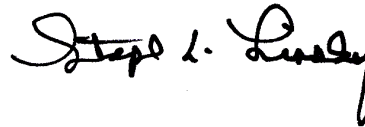


John A. King, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF MAILING - October 29, 2010



Sandor J. Zapolin
Member



Stephen M. Linsky, Esq.
Member

ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS DISTRICT COURT
(See Section 42, Chapter 151A, General Laws Enclosed)

LAST DAY TO FILE AN APPEAL IN COURT – November 29, 2010