

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0577

Reversed
Ineligible for TAA Benefit Payments

PROCEDURAL HISTORY: On March 12, 2015, the Oregon Employment Department (the Department) issued a potential benefit report concluding that claimant was not eligible to receive Trade Act Assistance (TAA) benefit payments because she failed to meet the deadline for enrolling in an approved training program. Claimant filed a timely request for hearing. On April 16, 2015, ALJ Shoemake conducted a hearing, and on April 28, 2015 issued Hearing Decision 15-UI-37568, reversing the Department's decision. On May 18, 2015, the Department filed an application for review with the Employment Appeals Board (EAB).

EAB considered the Department's written argument when reaching this decision.

FINDINGS OF FACT: (1) On July 31, 2014, Superior Talent Resources, Inc. laid claimant off. Subsequently, claimant applied for and received unemployment insurance benefits.

(2) On October 31, 2014, the U. S. Department of Labor issued a certification covering the workers that Superior Talent Resources laid off from its workforce as having been adversely affected by foreign trade. The certification issued to Superior Talent Resources was certification number 85592.

(3) On March 3, 2015, claimant filed a claim for Trade Act Assistance (TAA) payments as a worker adversely affected by foreign trade. As of April 16, 2015, claimant had not enrolled in an approved training program and had not sought a waiver of the training requirement or an extension of the deadline for doing so.

CONCLUSIONS AND REASONS: Claimant was not eligible to receive (TAA) payments.

In Hearing Decision 15-UI-37568, the ALJ concluded the evidence did not show that claimant ineligible to receive TAA payments. In reaching this decision, the ALJ relied on the version of 19 USC §2291(a)(5)(A)(ii) currently published in the United States Code. That version provides that a claimant is eligible to receive TAA payments only if he or she is enrolled in an approved training program no later than the last day of the 26th week after the work separation from adversely affected employment occurred or no later than the last day of the 26th week after claimant was certified as an adversely affected worker, whichever deadline occurs latest. Hearing Decision 15-UI-37568 at 4. At the time of the hearing on April 16, 2015, only 24 weeks had elapsed since the claimant's certification on October 31, 2014, and 19 USC §2291(a)(5)(A)(ii)(II) allowed claimant to seek a forty-five day extension of the enrollment period after May 7, 2015 (the last day of the 26th week after the certification). The ALJ therefore reasoned that Department did not show that claimant was ineligible for TAA benefits due to failing to enroll in an approved training program before the expiration of the final deadline period. We disagree with the ALJ's conclusion because she relied on a version of the statute that is not applicable to claimant's application for TAA payments.

The notes following 19 USC §2291 state that for layoffs and certifications that occur on and after January 1, 2014 the version of the training program deadlines that appear in the code book are not applicable. *See* Notes to 19 USC §2291. The Reversion of 2014 provides that the applicable version of the training program deadlines are those that were in effect on February 13, 2011, which is Section 231(a)(5)(A) of the Trade Act as amended in 2002. *Id.*; U.S. Department of Labor, Training and Employment Guidance Letter No. 7-13 (December 27, 2013) at 10 (http://wdr.doleta.gov/directives/Attach/TEGL/TEGL_7_13_Acc.pdf). To be eligible to receive TAA benefits under these statutory provisions, claimant was required to enroll in an approved training program by the latest of the last day of the 16th week after she was laid off or the last day of the 8th week after she was first certified as an adversely affected worker. *Id.* November 15, 2014 was the last day of the 16th week after claimant's work separation. December 27, 2014 was the last day of the 8th week after claimant was certified as an adversely affected worker. Under the applicable statutory provision, claimant could have sought to extend the later date for 45 days after December 27, 2014, but she did not do so. Section 231(a)(5)(A)(ii)(III) of the Trade Act as amended in 2002; *see also* TEGL No. 7-13 at 10. Applying the correct version of the statute, claimant's eligibility for TAA payments expired when she did not enroll in an approved training program by December 27, 2014 and did not file to extend the enrollment period.

The Department correctly concluded that claimant did not enroll in an approved training program within the applicable enrollment period. Because claimant did not seek to extend the enrollment period, claimant is not eligible to received TAA payments.

DECISION: Hearing Decision 15-UI-37568 is set aside, as outlined above.

Susan Rossiter and J. S. Cromwell;
D. P. Hettle, *pro tempore*, not participating.

DATE of Service: July 7, 2015

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem,

Oregon 97310 or visit the Court of Appeals website at courts.oregon.gov. Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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