

No. A07-945

State of Minnesota
In Court of Appeals

ALAA I ABDI,

Relator,

and

DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT,
Respondent.

RESPONDENT-DEPARTMENT'S BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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I. LEGAL ISSUE

Under the law an applicant is eligible for up to a 26-week extension of benefits under the Trade Assistance Act only if he took a full remedial course load as part of a program of remedial education. Alaa Abdi attended both remedial courses and occupational courses during the first 25 weeks of his 104-week TAA training plan. When his benefits were exhausted at the end of that program, the Department amended it to grant an additional 25 weeks of benefits under the mistaken belief that he had participated in a full-time remedial program for 25 weeks. Was Abdi wrongly granted the 25-week extension and, therefore, overpaid benefits for that period?

The Unemployment Law Judge held that Abdi was not entitled to the 25-week extension and that he was overpaid benefits for that period.

II. BACKGROUND, STATEMENT OF THE CASE, AND STATEMENT OF FACTS

For ease of understanding, the writer has combined this background section with the statement of the case and the statement of fact sections.

Alaa I. Abdi worked for Celestica through 2002, when Celestica went out of business.¹ Abdi established an unemployment benefit account with the Department of Employment and Economic Development (the "Department") in

¹ T.12 (Transcript references will be indicated as "T," with the page number following. Exhibits in the record will be "D" for the department with the number following).

2002, and he received his maximum benefit amount of \$7696.² Abdi then received a 13-week federal extension of his unemployment benefits in the amount of \$3848.

On January 29, 2003, Celestica was certified as eligible for the Trade Assistance Act of 2002, with an impact date of January 7, 2002, meaning that only workers who separated from employment on or after January 7, 2002 were eligible for benefits. On August 20, 2003, Abdi filed an application for Trade Adjustment Assistance (“TAA”) and Trade Readjustment Allowances (“TRA”).³

The Department approved Abdi’s TAA training plan September 2, 2003.⁴ Abdi’s original plan was to attend Rochester Community and Technical College (“RCTC”) for midrange computer specialist training from the fall of 2003 through the spring of 2006.⁵ Although Abdi had to take some remedial English and math courses, he originally stated in the plan that he still anticipated he would complete the program in 104 weeks.⁶ Abdi enrolled at RCTC in accordance with the plan, and took a combination of skills training and remedial courses from the fall of 2003 through the spring of 2005.⁷

The Department also approved Abdi’s application for TRA benefits. It paid Abdi basic TRA benefits totaling \$3848 for the period of March 21, 2004 through

² T. 12-13

³ D6

⁴ D3

⁵ T. D6

⁶ D6

⁷ T. 16; D7

June 19, 2004.⁸ Abdi then received additional TRA benefits of \$15,049 for the period of June 20, 2004 through June 18, 2005.⁹

In about May 2005, Abdi spoke with his TAA counselor, Dwight Jones about extending his benefits beyond June 2005, because he needed more time to complete his coursework at RCTC. Jones recommended an amendment to Abdi's plan to allow for a program of remedial education, because Abdi had to take 25 credits of remedial courses in English and math in order to graduate.¹⁰ The amendment was so Abdi would be considered to have been in a "remedial program" for the first four semesters (or 25 weeks) of his training.¹¹ This would then allow him to have up to a 25-week extension of his TRA benefits.

On May 5, 2005, the TAA coordinator approved a 25-week extension of Abdi's TRA benefits under the belief that Abdi was in a "remedial program" for the first 25 weeks of his training.¹² The Department paid Abdi remedial TRA benefits of \$296 per week for the period of June 19, 2005 through December 10, 2005, which was his period of extension.¹³

On November 6, 2006, the Department issued a TRA Overpayment Determination finding that the remedial TRA was incorrectly authorized for the

⁸ Return-2C

⁹ Return-2C

¹⁰ D6 and D7

¹¹ D8

¹² T. 15-16; D6

¹³ D8

period of June 19, 2005 through December 10, 2005, and holding Abdi overpaid in the amount of \$7400.¹⁴

Abdi appealed that decision, and a de novo hearing was held. After the hearing, the Unemployment Law Judge affirmed the initial determination.¹⁵ Abdi filed a request for reconsideration with the ULJ, who affirmed the decision that Abdi was overpaid TRA benefits of \$7400 for the period of June 19, 2005 through December 10, 2005.¹⁶

This matter is before the Minnesota Court of Appeals on a writ of certiorari obtained by Abdi under Minn. Stat. §268.105, subd. 7(a) (2006) and Minn. R. Civ. App. P. 115.

III. ARGUMENT

A. SUMMARY OF ARGUMENT

Federal law allows for an extension of TRA benefits of up to 26 weeks under the Trade Assistance Act if the applicant needed remedial training to complete the training plan, but only for the number of weeks that the applicant fully participated in a remedial training program.¹⁷ Federal regulations state that to be considered to have “fully participated” in a program, the applicant must

¹⁴ D1

¹⁵ See Appendix to Department’s Brief (“Appendix”), A4-A7

¹⁶ Appendix A1-A3

¹⁷ 19 USC §2293g; 10 CFR §617.15(b)(3).

attend full-time training.¹⁸ So when an applicant is in a remedial training program, he must attend full-time remedial courses.

Abdi was granted a 25-week extension of his TRA benefits under the Department's incorrect assumption that he had participated fully in a "program of remedial education" for 25 weeks. But Abdi did not attend remedial courses full-time at any point during his 104-week TAA training program. Rather, he took a combination of remedial courses and occupational courses. As such, Abdi never fully participated in a "remedial program," and so he did not qualify for an extension of remedial TRA benefits under the law. Abdi, therefore, was overpaid 25 weeks of TRA benefits in the amount of \$7400.

B. STANDARD OF REVIEW

Federal law provides that "[a] determination by a cooperating State agency with respect to entitlement to program benefits under an agreement is subject to review in the same manner and to the same extent as determinations under the applicable State law and only in that manner and to that extent."¹⁹

The standard of review for unemployment insurance matters is set out in the statute as follows:

(d) The Minnesota Court of Appeals may affirm the decision of the unemployment law judge or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision are:

¹⁸ 20 CFR §617.22f(4)

¹⁹ 9 U.S.C. § 2311(d).

- (1) in violation of constitutional provisions;
- (2) in excess of the statutory authority or jurisdiction of the department;
- (3) made upon unlawful procedure;
- (4) affected by other error of law;
- (5) unsupported by substantial evidence in view of the entire record as submitted; or
- (6) arbitrary or capricious.²⁰

In *Ress v. Abbott Northwestern Hosp., Inc.*, the Supreme Court stated that the courts exercise independent judgment on issues of law.²¹ The Supreme Court held in *Hibbing Educ. Ass'n v. Pub. Employment Relations Bd.*, that the construction of a statute is a question of law that is fully reviewable by an appellate court.²² It has also held in *Nadeau v. Austin Mut. Ins. Co.*, that statutory terms “generally should be construed according to their plain and ordinary meaning.”²³ In *Geo. A. Hormel & Co. v. Aspen*, the Supreme Court held that an agency’s interpretation of the statutes it administers is entitled to deference and should be upheld, absent a finding that it is in conflict with the statute’s express purpose or the legislature’s intent.²⁴

C. ABDI DID NOT QUALIFY FOR AN EXTENSION OF HIS TRA BENEFITS

The facts of this case are undisputed. Abdi received 104 weeks of TRA benefits and an additional 25 weeks of TRA benefits under an extension granted

²⁰ Minn. Stat. § 268.105, subd. 7(d) (2006)

²¹ 448 N.W.2d 519, 523 (Minn. 1989).

²² 369 N.W.2d 527, 529 (Minn. 1985).

²³ 350 N.W.2d 368, 373 (Minn. 1984).

²⁴ 428 N.W.2d 47, 50 (Minn. 1988).

due to his need for a program of remedial education. Unfortunately, the Department made a mistake in granting the extension, because Abdi never fully participated in a program of remedial education, and so he was not eligible for an extension of benefits under the statute.²⁵ Abdi, accordingly, was overpaid 25 weeks of TRA benefits.

The federal law that governs extensions for workers in need of remedial education states as follows:

Notwithstanding any other provision of this section, in order to assist an adversely affected worker to complete training approved for the worker under section 2296 of this title which includes a program of remedial education (as described in section 2296(a)(5)(D) of this title), and in accordance with the regulations prescribed by the Secretary, payments may be made as trade readjustment allowances for up to 26 additional weeks in the 26-week period that follows the last week of entitlement to trade readjustment allowance otherwise payable under this part.²⁶

Section 2296(a)(5)(D) defines a “program of remedial education” as “any program of remedial education.”²⁷ The regulations that govern this statute state that an individual in a TAA approved program must “attend training full-time.”²⁸ This means that payments for additional weeks under 19 USC §2293g are only allowed for the number of weeks that a worker took full-time remedial training.

Abdi’s extension was granted, because a Department TAA coordinator misunderstood what type of training Abdi was enrolled in at RCTC. The

²⁵ 19 USC §2293g

²⁶ 19 USC §2293g

²⁷ 19 USC §2296(a)(5)(D)

²⁸ 20 CFR §617.22f(4)

coordinator thought he was enrolled full-time in remedial courses for the first 25 weeks of his training based upon a notation on the application for an amended training plan by the TAA representative.²⁹ Abdi, however, was taking both remedial courses and occupational courses during that time period.³⁰ Abdi's remedial training was not full-time and so he was not fully participating in a program of remedial education. Therefore, he was eligible for the 52 weeks of basic TRA benefits and the 52 weeks of additional TRA benefits he received, but not for the 25 weeks of extended benefits he received from June 19, 2005 through December 10, 2005. As such, the ULJ correctly determined that Abdi was overpaid benefits of \$7400 for that period.

D. ABDI'S ARGUMENTS

1. The federal statute and regulations require full-time attendance in remedial courses to be considered in a remedial education program.

Abdi's counsel argues that the federal statute and regulations governing remedial TRA extensions does not require workers to participate full-time in remedial training. But this goes against the meaning of the statute and would change Congress' intent. The Court, therefore, should not be read the federal statute as Abdi's attorney suggests.

²⁹ D6

³⁰ D7

The Supreme Court held in *Lolling v. Midwest Patrol*, that the construction of a statute is a question of law subject to de novo review.³¹ The Court reasoned in *Lolling* that “[w]hile this court is not bound by an agency’s conclusions of law, the manner in which an agency has construed a statute may be entitled to some weight when the statutory language is technical in nature and the agency’s interpretation is one of longstanding application.”³²

In *Resident v. Noot*, the Supreme Court stated:

As a general rule, this court defers to an agency’s interpretation [of its own rule] when the language subject to construction is so technical in nature that only a specialized agency has the experience and expertise needed to understand it, when the language is ambiguous or when the agency interpretation is one of long standing.³³

Furthermore, this Court held that when analyzing an Unemployment Law Judge’s decision, it gives deference to the ULJ’s expertise and special knowledge when determining whether his application of the unemployment insurance law is correct.³⁴

In this matter, the ULJ applied the federal statutes and regulations governing TRA/TAA benefits to determine that Abdi was not eligible for a 25-week extension of his TRA benefits at the end of his 104-week entitlement, and that he was overpaid benefits. This decision was based upon the Department’s

³¹ 545 N.W.2d at 375.

³² *Id.*

³³ 305 N.W.2d 311, 312 (Minn. 1981)(citations omitted).

³⁴ See *James v. Comm. of Econ. Sec.*, 354 N.W.2d 840, 844 (Minn. App. 1984).

interpretation of 19 USC §2293 and the corresponding regulations at 20 CFR §617 to mean that an individual must attend full-time remedial courses to be considered in a program of remedial education.

The federal statute states that an extension may only be granted to an individual whose training plan includes a “program of remedial education,” and who needs additional time to complete his training.³⁵ The regulations, in turn, require an individual in TAA approved training to “attend training full time.”³⁶ Reading these two requirements together, the Department requires that an individual must attend full-time remedial courses to be considered to be fully participating in a program of remedial education.

Looking at the definitions of “remedial” and “program,” it is clear how the Department made its analysis. *Merriam-Webster’s Online Dictionary* defines “remedial” as an adjective that defines a word as something that is “concerned with the correction of faulty study habits and the raising of a student’s general competence.”³⁷ It defines “program” as a “plan or system under which action may be taken toward a goal.”³⁸ Putting the two words together creates a plan or system taking action toward the goal of correcting faulty study habits and raising a student’s general competence. When the requirement from the federal regulations that an individual participate full-time in his training program is added, the logical

³⁵ 19 USC §2293g

³⁶ 20 CFR §617.22f(4)

³⁷ <http://www.m-w.com/> (visited August 9, 2007)

³⁸ *Id.*

conclusion is that an individual must attend remedial courses full-time to be considered in a “program of remedial education.”

Abdi’s attorney, however, asks the Court to read the federal statutes and regulations differently, to allow Abdi to be considered in a “program of remedial education” by virtue of taking a combination of remedial and occupational courses. But this goes against Congress’ intent. The statute allows extensions for individuals in a training plan that includes a “program of remedial education.” It does not state the extension is for individuals in a training plan that includes intermittent remedial courses while also taking occupational training. If this were allowed, the extension may be available to almost any individual, such as someone who takes a refresher course in mathematics even though he is also taking upper-level technical courses. This goes against the purpose of the extension, which is to help individuals who must take a program of remedial education before they can move on to their occupational training.

Abdi’s attorney argues that the Department’s interpretation of 19 USC §2293g renders an unfair result as to Abdi, because it is asking him to enroll full-time in remedial courses at the end of his education. This is not correct. The Department granted Abdi’s 25-week extension based upon the misconception that he was enrolled full-time in remedial courses at the start of his education. As seen in the amended training plan, the Department then deemed Abdi’s first four

semesters to be his program of remedial education.³⁹ Had Abdi in fact attended remedial courses full-time during this period, then he would have legitimately been in a program of remedial education. While it is unfortunate that he was not, this does not render the Department's interpretation of 19 USC §2293g incorrect. And as the Supreme Court held in *Lolling* and *Resident*, the Department's interpretation of this law should be given deference.

2. The Department cannot waive Abdi's overpayment under Minnesota law, but it can take passive measures to collect on the overpayment.

Abdi's attorney argues that even if Abdi was legitimately overpaid TRA benefits, the Department should waive his requirement to repay. Notably, both the federal statutes and regulations state only that a Department *may* waive the recovery of an overpayment of TRA benefits, not that it *must* waive recovery.⁴⁰ The statute says that "the State agency *may* waive the recovery of any such overpayment..."⁴¹ and the regulation says that "the State agency or the Secretary *may* waive such repayment..."⁴² As such, it is clearly the Department's prerogative whether or not to waive a TRA overpayment. Although the Department cannot waive Abdi's overpayment under Minnesota law, it can choose how to collect the overpayment. Therefore, even though Abdi's counsel never

³⁹ D6

⁴⁰ 19 USC §2315(a); 20 CFR §617.55(a)

⁴¹ 19 USC §2315(a)(emphasis added)

⁴² 20 CFR §617.55(a)(emphasis added)

asked the Department to take passive collection measures, the statute allows for this option.

The Department chose not to waive Abdi's overpayment in line with its state statute that says "[t]here shall be no equitable or common law denial or allowance of unemployment benefits."⁴³ Abdi is situated no differently than any other applicant for unemployment benefits under the Minnesota program who is found to be overpaid due to error. The Department issues thousands of overpayment decisions annually, including overpayments due to "an error by any employee of the department."⁴⁴ And the Department does not waive overpayments, regardless of the reason for the overpayment.

While some states, such as Wisconsin,⁴⁵ have chosen to provide for the waiver of overpayments due to departmental error, Minnesota does not waive overpayments as a rule. The Minnesota legislature chose not to provide for a waiver of overpayments, because the Department cannot predict what may happen in the future. While it may create a hardship for the applicant to repay today, that does not mean it would be a hardship in five years. For example, one way to collect overpayments is to recoup state lottery winnings. So if an applicant is unable to pay one day, and wins the lottery the next, his overpayment can be recouped from his lottery winnings. But if an applicant's overpayment was

⁴³ Minn. Stat. §268.069, subd. 3 (2006)

⁴⁴ Minn. Stat. §268.18, subd. 1(a) (2006)

⁴⁵ See Wis. Stat. §108.02 (10e)

waived, the Department would not be able to recoup the overpayment despite this change in circumstances. The inability to predict this type of change in an applicant's financial circumstances is why the Department does not waive overpayments.

The Department's choice not to *waive* overpayments as a whole is not an abuse of its discretion, because it may choose not to *collect* on an overpayment due to error. The statute states that:

“[t]he commissioner shall have discretion regarding the recovery of any overpayment Regardless of any law to the contrary, the commissioner shall not be required to refer any amount determined overpaid [due to error] to a public or private collection agency, including agencies of this state.”⁴⁶

As such, the Department may choose to take very passive collection measures if the overpayment was due to error. In some instances, for example, the Department merely sends out monthly dunning notices reminding the applicant that he has an overpayment obligation.

Furthermore, the statute specifically states that an overpayment is not considered a “debt” to the state of Minnesota, and so it does not appear on an applicant's credit report.⁴⁷ So, if the Department takes passive measures to collect on the obligation, the only effect on the applicant is that he knows there is an outstanding overpayment.

Substantial evidence supports the ULJ's decision that Abdi was overpaid

⁴⁶ Minn. Stat. §268.18, subd. 6(a) and (b)(2006)

⁴⁷ Minn. Stat. §268.18, subd. 6(c) (2006).

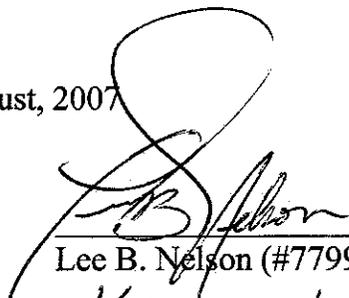
TRA benefits. The Department's choice not to waive that overpayment is not an abuse of its discretion, because it may take passive measures to collect on it. Accordingly, the Department's final decision that Abdi was overpaid should not be disturbed.

IV. CONCLUSION

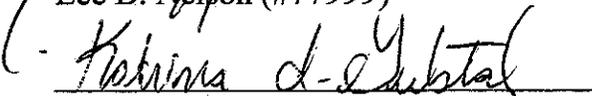
The agency decision that Abdi was overpaid TRA benefits because he does not meet the requirements of the federal program for an extension of TRA benefits is supported by the evidence and the law.

The Department respectfully requests that the Court affirm the final agency decision.

Dated this 20th day of August, 2007



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