

CASE NO. A07-0945

STATE OF MINNESOTA
IN COURT OF APPEALS

Alaa L Abdi,

Relator-Appellant,

vs.

Department of Employment and
Economic Development

Respondent.

RELATOR-APPELLANT'S INFORMAL 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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LEGAL ISSUES

1. DID THE STATE ERR WHEN IT ATTEMPTED TO RESCIND APPROVAL OF SIMULTANEOUS PROGRAMS BECAUSE THE PROGRAMS WERE NOT SEGREGATED AND SERIAL?

The Administrative Law Judge Held: No

19 USC 2293(a) (2)

19 USC 2293 (g)

19 USC 2296 (a)(1)(f)

19 USC 2296 (a)(5)(g)

2. DID THE ADMINISTRATIVE LAW JUDGE ERR WHEN HE FAILED TO CONSIDER WAIVER OF THE CLAIMED REIMBURSEMENT IN THE INTERESTS OF JUSTICE?

The Administrative Law Judge Held: No Ruling

19 USC 2102.

20 CFR 617.55 (a)(i) and (a)(ii)

STATEMENT OF CASE AND FACTS

STATEMENT OF CASE:

Relator Alaa I. Abdi appeals Unemployment Law Judge Clarence Anderson's February 9, 2007 ruling, and April 9, 2007 affirmation of his ruling, that Alaa I. Abdi is not entitled to remedial TRAA benefits. The case was heard by telephone conference on December 22, 2006.

STATEMENT OF FACTS:

Mr. Alaa Abdi is a 38 year old married man earning net \$346.62 per month. He is the sole support for his wife and five children. (T. p. 11). He was born in Somalia, moved to Yemen in 1986 and to Minnesota in 2000. English is now his third language. (T.pp. 11-12). In Minnesota, he worked for IBM and then Celestica (spelled "Scholastica" in the transcript). (T.p. 12). Celestica went out of business in 2002 and Mr. Abdi filed for unemployment in 2002. (T.pp. 12-13). Mr. Abdi's application for TRAA benefits was completely accurate. (T.p. 13). On his application, Mr. Abdi indicated he was taking GED courses. (T.p. 13). He clearly needed remedial training in English and Math. (T.p. 14). Mr. Abdi was tested by the local state college (RCTC) and it was determined that the remedial courses were necessary pre-requisites for the TRAA occupational training. (T.p. 15). A representative of the State of Minnesota approved Mr. Abdi's application for TRAA benefits. (T.p. 13). The State approved the training plan on September 2, 2005 (Hearing Exhibit 3) and a Trade Act Training Contract was signed by Mr. Abdi and the State of Minnesota Department of Employment and Economic Development in October of 2003 (Hearing Exhibit 4). In August of 2005, the State representative extended the TRAA benefits for Mr. Abdi because Mr. Abdi had to take a program of remedial education to qualify for the skills training. (T.p. 15). The State representative called TRAA to check to make sure the extension was proper. (T.p. 16). The extension to December, 2005 was accepted by TRAA. (T.p. 16).

Eleven months after the approved training had been completed, the Department sent Mr. Abdi a notice claiming that Mr. Abdi must repay the TRAA training for the months of June 2, 2005 to December 10, 2005 because "...For a period of time you were scheduled for full-time

TAA approved training at this time remedial and occupations training were scheduled concurrently. The combination of the remedial and occupational training brought you to full-time status, but the remedial itself was not full-time....” (Hearing Exhibit 1). After receiving this notice, Mr. Abdi contacted Mr. Dwight Jones, the State representative he had been dealing with. He asked Mr. Jones to explain the notice. Mr. Jones said it didn’t make sense and that everything Mr. Abdi had done was correct. (T.p. 17). Mr. Abdi then approached Ms. Kirsten Keeler, a Minnesota dislocated worker’s benefits counselor. She didn’t understand the State’s position either. (T.p. 17).

The Department’s position at the hearing on Mr. Abdi’s appeal was that remedial training had to be full time and it had to precede the occupational training. (T.pp. 6-7). For support, the Department cited 19 USC 2293, subsection G. (T.pp. 6-7). The Unemployment Law Judge affirmed the Department’s position.

LEGAL ARGUMENT

1. FEDERAL STATUTES ALLOW BOTH REMEDIAL AND VOCATIONAL TRAINING OF UP TO 130 WEEKS FOR DISLOCATED WORKERS UNDER STATE APPROVED PROGRAMS. THE STATUTES DO NOT REQUIRE SEGREGATION OR SERIALIZATION OF THE VOCATIONAL AND REMEDIAL PROGRAMS. MR. ABDI WAS STATE APPROVED FOR 114 WEEKS OF SIMULTANEOUS VOCATIONAL AND REMEDIAL PROGRAMS. DID THE STATE ERR WHEN IT ATTEMPTED TO RESCIND APPROVAL OF THE PROGRAMS ELEVEN MONTHS LATER BECAUSE THE REMEDIAL PORTION OF THE PROGRAM WAS NOT FULL- TIME AND NOT COMPLETED BEFORE THE OCCUPATIONAL PORTION WAS COMMENCED?

STANDARD OF REVIEW: De novo review. Statutory construction is a question of law, which is reviewed de novo. *Scheeler v. Sartell Water Controls, Inc.*, 730 N.W.2d. 285 (Minn. App., 2007); *Frost-Beneco Elec. Ass’n v. Minnesota Pub. Utils. Comm’n*, 358 N.W.2d. 639, 642

(Mimm, 1984).

All parties agree that Mr. Abdi was qualified for participation in TRAA training, was approved for training, and fully participated in the training as approved. He clearly met the program and participation requirements set forth in 19 USC § 2291 and 20 CFR §§ 617.11 and 617.19. There are no requirements in any of these code or statutory provisions that any remedial portion of the training be taken prior to any occupational training or that the remedial program be full time. See 19 USC § 2291 and 20 CFR §§617.11 and 617.19. The plan for Mr. Abdi met all of these requirements. Federal statutes and code require both approval and payment of benefits of such approved plans within the subject to the limitations set forth in the statutes. See 19 USC 2296 (a)(1)(f) and 20 CFR § 617.22. A plan such as Mr. Abdi's plan is to be approved for up to 104 weeks if it involves only occupational training or up to 130 weeks if it involves a program of remedial training. See 19 USC § 2293 (a)(2).

In the face of these clear code and statutory requirements that Mr. Abdi's plan be approved for up to 130 weeks, the State is claiming that 19 USC § 2293 (g) prohibits payments if the remedial portion of the training is not completed prior to occupational training and is not full time. The section cited by the Department reads in full 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 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 that last week of entitlement to trade readjustment allowances otherwise payable under this part ” 19 USC § 2293 (g). Emphasis supplied.

Nothing in this section clearly over rules 19 USC § 2293 (a)(2) setting training at up to 130 weeks if it includes a program of remedial training. In fact, it confirms the additional 26 weeks

of training. It further states the purpose is to assist an adversely affected worker. The section says nothing about the remedial program being a full time program or that it necessarily be completed prior to any occupational training.

Despite his citation to 19 USC 2293(g), the Unemployment Compensation Judge cites a fear that there would be no limit to the number of classes an applicant could take if he allowed Mr. Abdi to be paid beyond the 104 weeks for programs that do not include a remedial program. The Judge failed to consider the limit of 130 weeks in 19 USC 2293 (a)(2). The limit he feared was not present is present. It is 130 weeks.

There is no authority for the State's position that remedial training must be full time and completed prior to any occupational skills training. Mr. Abdi's program was quite properly approved by the State. The decision below must be reversed.

2. FEDERAL TRAA FUNDING IS DESIGNED TO BE A REMEDIAL PROGRAM TO HELP WORKERS DISLOCATED BY FOREIGN COMPETITION. IT IS NOT DESIGNED AS A TRAP FOR UNWARY DISLOCATED WORKERS. MR. ABDI FOLLOWED THE REQUIREMENTS SET FORTH BY THE DEPARTMENT. DID THE ADMINISTRATIVE LAW JUDGE ERR WHEN HE FAILED TO WAIVE THE CLAIMED REIMBURSEMENT IN THE INTERESTS OF JUSTICE?

STANDARD OF REVIEW: De novo review. The relief requested is statutorily authorized. The Administrative Law Judge failed to address the issue. See *Hagen v. United Air Lines, Inc.*, 2007 WL 1412933 (Minn. App., 2007) attached as Appendix A52-A54 and *Beuning v. Beuning*, 2007 WL 152118 (Minn. App. 2007) attached as Appendix A48-A51.

The TRAA program was designed to be a remedial program to assist workers to adjust to international trade flows. Mr. Abdi was such a worker. English was his third language, he was attempting to gain those skills in college level remedial courses, and his company had gone out

of business due to foreign competition. He applied truthfully for benefits and did exactly what was asked of him by the State. He relied upon the State for advice and expertise. He is completely unable to pay the State back. 19 USC § 2315 (a)(1)(A, and B) and 20 CFR §§ 617.55 (a)(i) and (a)(ii) were written for just such persons. The statute and code provisions allow a waiver of any alleged repayment obligation for an overpayment if the payment was without fault of the individual and requiring repayment would be contrary to equity and good conscience. The elements of fault are discussed at 20 CFR § 617.55, subd. 2. Mr. Abdi was completely honest, compliant, and hard working when applying for and participating in the program. He was not at fault in any way and no one claims he was at fault. It is contrary to equity and good conscience to require repayment of a dislocated worker without means to make such repayments. He applied for and received dislocated worker's training under the TRAA program that was designed to help him. There isn't a better case for waiver. The State and then the Unemployment Law Judge should have exercised their discretion to waive the claimed repayment. Neither gave any indication that they even considered the waiver. Payment should be waived upon these undisputed facts. This Court could remand for further fact finding, although the record is well developed. However, in the interests of judicial economy, this Court should waive any repayment based upon the uncontested facts of record.

CONCLUSION

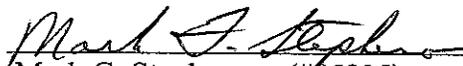
Mr. Alaa Abdi was forced out of Somalia, moved to Yemen, and then moved to Minnesota where he found suitable work to support his family of 7. His employer, however, went out of business due to foreign competition. Mr. Abdi filed for, was approved for, and completed a TRAA dislocated worker's training program that included remedial training and

occupational training. The program was completed in 114 weeks. TRAA statutes and code provisions allow up to 130 weeks in a mixed program of remedial and occupational training. The statutory and code sections do not require that remedial training be full time or that it precede occupational training. Eleven months after the program was completed, the Department claimed it had made a mistake in approving the program and now wants a repayment of \$7400 which Mr. Abdi can not afford. There is no statutory or code support for the Department's claim that repayment is required. The Administrative Law Judge's decisions should be reversed to remedy this wrong to Mr. Abdi.

Dated: July 17, 2007

Respectfully Submitted,

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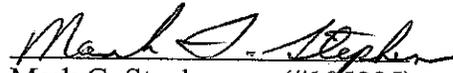
RELATOR'S CERTIFICATE OF COMPLIANCE

I hereby certify that Relator's Brief complies with the type-volume limitation of Rule 132.01, subdivision 3, of the Minnesota Rules of Civil Appellate Procedure. It was monospaced font text and contains no more than 650 lines of text. Relator's brief was prepared on WordPerfect 11 word processing software.

Dated: July 17, 2007

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