



COMMONWEALTH OF MASSACHUSETTS  
DIVISION OF UNEMPLOYMENT ASSISTANCE  
BOARD OF REVIEW  
Government Center  
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Boston, MA 02114

Tel. (617) 626-6400  
Office Hours:  
8:45 a.m. to 5:00 p.m.

## DECISION OF BOARD OF REVIEW

In the matter of:

Appeal number: **BR-95104-TRA**

### CLAIMANT APPELLANT:

Office # 44

On March 16, 2005, in Boston, Massachusetts, the Board reviewed the written record and recordings of the testimony presented at the hearings held by the Commissioner's representative on September 7, 2004, and January 6, 2005.

On November 17, 2004, the Board allowed the claimant's application for review of the Commissioner's decision in accordance with the provisions of section 41 of Chapter 151A of the General Laws, the Massachusetts Employment and Training Law (the Law). The Board remanded the case to the Commissioner to take additional evidence and to make further findings of fact. The Commissioner returned the case to the Board on February 8, 2005.

The Board has reviewed the entire case to determine whether the Commissioner's decision was founded on the evidence in the record and was free from any error of law affecting substantial rights.

The appeal of the claimant is from a decision of the Commissioner which concluded:

Given the facts as stated above, it is concluded that the claimant is not eligible to receive Trade Readjustment Allowances benefits pursuant to Section 114(b) of the Trade Reform Act of 2002.

In this case, the claimant became enrolled in an approved TAA training course on June 1, 2004.

Insofar as the claimant was not enrolled in such training by either the last day of the 16<sup>th</sup> week following her most recent total separation from adversely affected work or the last day of the 8<sup>th</sup> week following the week in which the Secretary issued a certification that covered the claimant, her application for Trade Readjustment Allowances benefits must be denied.

The claimant is not eligible to receive Trade Readjustment Allowances benefits.

**Section 114(b) of the Trade Reform Act of 2002 (107 P.L. 210, Title I, Subtitle A), which amends Section 231(a)(5)(a) of the 1974 Act, is pertinent and provides, in part, as follows:**

**Section 114(b). (5) Such worker**

- (A)(i) is enrolled in a training program approved by the Secretary under Section 236(a) of this title, and

(ii) the enrollment required under clause (i) occurs no later than the latest of-

- (I) the last day of the 16<sup>th</sup> week after the worker's most recent total separation from adversely affected employment which meets the requirements of paragraphs (1) and (2),
- (II) the last day of the 8<sup>th</sup> 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 that 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).

The Commissioner's representative held a hearing on September 7, 2004. Both parties appeared. After reviewing the record, the Board remanded the case to the Commissioner to take additional evidence and to make further findings of fact. The Commissioner's representative held a remand hearing on January 6, 2005. Both parties appeared. The Commissioner's representative then issued the following consolidated final findings of fact:

1. The claimant's appeal is of a determination that denied her application to receive Trade Readjustment Allowances benefits. The reason for the denial was the claimant's failure to become enrolled in an approved TAA training course no later than the last day of the 16<sup>th</sup> week following the date of her most recent total separation from adversely affected employment or the last day of the 8<sup>th</sup> week after the week in which the Secretary issues a certification covering the worker.
2. The claimant last worked for Main Street Textiles, Inc., on December 12, 2003, when she was laid off from her job due to a lack of work.
3. Main Street Textiles, Inc., was certified under Chapter 2 of Title II of the Trade Act of 1974 to be an employer whose employees were adversely affected due to foreign imports. The impact date of that certification was December 3, 2003.
4. On March 16, 2004, the Division of Unemployment Assistance granted former employees who became permanently separated from their jobs with the instant employer between November 18, 2003 and December 3, 2005, a 45 day extenuating circumstances waiver to enroll in an approved TAA training course.
5. The claimant submitted an application to enroll in a TAA training course on April 23, 2004 [sic]. On June 1, 2004, the claimant's application to enter into such training was approved. The claimant was [sic] became enrolled in that training course on June 1, 2004.
6. The last day of the 16<sup>th</sup> week after the claimant's most recent total separation from the instant employer was April 3, 2004.
7. The last day of the 8<sup>th</sup> week after the week in which the Secretary issued a certification that covered the claimant was January 31, 2004.

8. The deadline for the claimant to participate in the TAA program required her to be enrolled in such by either the 8<sup>th</sup> week after the week in which the Secretary issued the certification in question, which was January 31, 2004, or by the 16<sup>th</sup> week after the claimant's most recent total separation from the instant employer in question, which was April 3, 2004. The claimant filed her application to participate in such on March 26, 2004. The Agency issued a determination that approved the claimant's application on March 31, 2004.
9. The deadline for the claimant to apply for the TRA Benefits was originally April 3, 2004. It is not known why the deadline was extended to April 29, 2004 and not May 18, 2004, which would have represented 45 days after the original deadline of April 3, 2004.

The claimant never completed an application to receive TRA Benefits because she was advised by her local office counselor that completing such an application was not necessary.

The claimant did not need to wait for a determination to be issued concerning TAA benefits before she could apply for the TRA benefits.

10. The contract document referred to in Exhibit # 3 is a Training Contract Pre-Approval Form that was submitted to the Division of Unemployment Assistance on behalf of the claimant regarding training she had requested to attend.

The claimant was not responsible for personally filing the contract documents in question as part of her application process. Doing so is the responsibility of the local office counselor.

The claimant is being held responsible for the alleged late submission of the contract because an issue code was created in the computer system of the Division of Unemployment Assistance when that contract was submitted and the staff members of the Agency's TRA/TAA Unit automatically deny all applications/contracts that have such an issue code when filed.

After reviewing the record, the Board adopts the findings of fact made by the Commissioner's representative as being supported by substantial evidence. The Board concludes as follows:

The evidence and testimony demonstrate that the claimant complied with the requirements of Section 114(b) of the Trade Reform Act of 2002 (107 P.L. 210, Title I, Subtitle A). The claimant submitted, on March 26, 2004, an application to enroll in a TAA training course. This application was filed in a timely fashion. The claimant was not responsible for personally filing the contract documents in question. This duty is the responsibility of the local office counselor. The claimant was held responsible for the alleged late submission of the contract, because an issue code was created in the Agency computer system when the contract was submitted. The staff members of the Agency's TRA/TAA Unit automatically deny all applications/contracts that contain such an issue code when filed. The claimant cannot be held culpable for an administrative error over which she had no control. The claimant has established that she complied with the requirements of Section 114(b) of the Trade Reform Act of 2002 (107 P.L. 210, Title I, Subtitle A), and she is entitled to receive Trade Readjustment Allowances benefits.

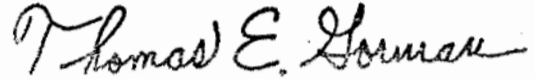
The Board modifies the Commissioner's decision. The claimant is entitled to TRA benefits.



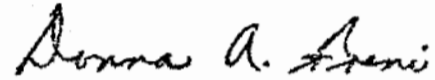
Kevin P. Foley  
Chairman

BOSTON, MASSACHUSETTS  
DATE OF MAILING -

MAR 22 2005



Thomas E. Gorman  
Member



Donna A. Freni  
Member

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

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LAST DAY- APR 21 2005