STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1023

Lee A. Vanguilder,
Relator,

vs.

Department of Employment and
Economic Development,
Respondent.

Filed April 21, 2009
Reversed and remanded
Klaphake, Judge

Department of Employment and Economic Development
File No. 20649083-1

Lee A. Vanguilder, 2150 Grand Avenue, Albert Lea, MN 56007-2006 (pro se relator)

Lee B. Nelson, Katrina I. Gulstad, Department of Employment and Economic Development, E2000 First National Bank Building, 332 Minnesota Street, St. Paul, MN 55101-1351 (for respondent)

Considered and decided by Peterson, Presiding Judge; Klaphake, Judge; and Bjorkman, Judge.

U N P U B L I S H E D O P I N I O N

KLAPHAKE, Judge

Relator Lee Van Guilder was laid off from Progress Casting Group, Inc. on May 30, 2007. Progress Casting employees were certified under the United States Trade Act of 1974 for trade adjustment assistance (TAA) effective June 8, 2006. Relator

challenges the unemployment law judge's (ULJ) denial of trade readjustment allowances (TRA) under the Act based on relator's failure to enroll in, complete, or obtain a waiver of TAA-approved training within the time period required by the Act. Because the Act does not specify that this time period applies to waivers, we reverse and remand.

D E C I S I O N

The United States Trade Act of 1974 (the Act) 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 U.S.C. § 2311(d) (2007). Under state law, if the decision of the ULJ prejudiced substantial rights of the relator because the findings or conclusion were affected by an error of law or unsupported by substantial evidence, this court may reverse or modify the decision. Minn. Stat. § 268.105, subd. 7(d) (Supp. 2007). This court defers to credibility determinations made by the ULJ. *Abdi v. Dep't of Employment & Econ. Dev*., 749 N.W.2d 812, 814 (Minn. App. 2008). This court reviews questions of law de novo. *Carlson v. Dep't of Employment and Econ. Dev.*, 747 N.W.2d 367, 371 (Minn. App. 2008). Here, there are no facts in dispute. The only question presented to the ULJ was whether relator satisfied the eligibility requirements for TRA benefits under the Act. Statutory interpretation is a question of law this court reviews de novo. *Houston v. Int'l Data Transfer Corp*., 645 N.W.2d 144, 149 (Minn. 2002).

The Act requires workers to meet certain conditions for eligibility for TRA benefits. 19 U.S.C. § 2291(a) (2007). The condition at issue here relates to training programs and requires that the worker:

> **(A)**
>
> > **(i)** is enrolled in a training program approved by the Secretary under section 2296(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 16th 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 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).
>
> **(B)** has, after the date on which the worker became totally separated, or partially separated, from the adversely affected employment, completed a training program approved by the Secretary under section 2296(a) of this title, or
>
> **(C)** has received a written statement under subsection (c)(1) of this section after the date described in subparagraph (B).

19 U.S.C. § 2291(a)(5).

19 U.S.C. § 2291(c)(1) authorizes the Secretary of Labor to waive the enrollment requirement of section 2291(a)(5)(A) "if the Secretary determines that it is not feasible or appropriate for the worker, because of 1 or more" of the listed reasons. One of the reasons listed is if a "worker possesses marketable skills for suitable employment . . . and there is a reasonable expectation of employment at equivalent wages in the foreseeable future." 19 U.S.C. § 2291(c)(1)(B). Relator indicated this reason for the requested waiver on the form he signed on August 1, 2007. In the agreements under 19 U.S.C. § 2311, the Secretary may authorize a cooperating state to issue these waivers. 19 U.S.C. § 2291(c)(3)(A).[1]

Because Progress Casting employees were certified for TAA effective June 8, 2006, the last day of the 16th week following the termination of relator's employment, September 22, 2007, is the later of the two dates specified in section 2291(a)(5)(A)(ii) by which relator needed to enroll in an approved training program, if he had not completed such a program as specified in section 2291(a)(5)(B) or received a written waiver of enrollment as specified in section 2291(a)(5)(C). Allowing for extenuating circumstances, this date could have been extended under section 2291(a)(5)(A)(ii)(III) to November 6, 2007.

At the time the ULJ decided this issue, relator had not met the eligibility requirements of 19 U.S.C. § 2291(a)(5). However, relator contends that he was

[1] The record does not contain a copy of the agreement between the State of Minnesota and the Department of Labor (DOL); however, the testimony of relator's employment counselor indicates that she is able to sign enrollment waivers, implying the existence of such an agreement.

wrongfully denied benefits because he should have received a written waiver of the enrollment requirement based on the waiver form he signed on August 1, 2007. The department admits that it would have approved this waiver but did not because it believed that relator was enrolled in an approved training program that satisfied the enrollment deadline of September 22, 2007, rendering the waiver unnecessary. By the time the department learned in January 2008 that relator was not enrolled in the training program, the department apparently believed it was too late to approve the waiver to enable relator to meet the statutory conditions for TRA benefits. The ULJ agreed with the construction of 19 U.S.C. § 2291(a)(5), requiring an applicant to either enroll in, complete, or obtain a written waiver for TAA-approved training within the time frames specified in section 2291(a)(5)(A)(ii). We disagree with this construction.

Words and phrases contained in a statute should be construed "according to their plain and ordinary meaning." *Am. Family Ins. Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). "When a decision turns on the [plain] meaning of words in a statute or regulation . . . reviewing courts are not bound by the decision of the agency and need not defer to agency expertise." *St. Otto's Home v. Minn. Dep't of Human Servs.*, 437 N.W.2d 35, 39-40 (Minn. 1989) (citations omitted); *see also Abdi*, 749 N.W.2d at 817 (reversing a determination of the ULJ that a relator was ineligible for extended TRA benefits because the Act "clearly and unambiguously" does not require participation in full-time remedial training in order to receive benefits.).

Section 2291(a)(5) of the Act conditions receipt of TRA benefits on three alternative events. The first event described in subpart (A) is the enrollment in an

approved training program within specified time periods. The second event described in subpart (B) is the completion of an approved training program after the date on which the worker became separated from employment. The third event described in subpart (C) is the receipt of a waiver of the enrollment requirement after the date on which the worker became separated from employment. Subparts (B) and (C) do not specifically incorporate the time periods provided in subpart (A), and in fact specify only that they must occur after the separation date. The time limits in 19 U.S.C. § 2291(a)(5)(A)(ii)(I)-(IV) were added by amendment in 2002. *See* Act of Aug. 6, 2002, Pub. L. No. 107-210, § 114(b), Stat. 939. They were added only to section 2291(a)(5)(A), not sections 2291(a)(5)(B) or (C), even though the same amendment altered the language of section 2291(a)(5)(C). *See* Act of Aug. 6, 2002, Pub. L. No. 107-210, § 115(b), Stat. 939. Thus, the Act does not specify that the receipt of a waiver of training must occur within the same time frame as enrollment in a training program. The plain language of the statute does not support such an interpretation. If the receipt of a waiver was not required by November 6, 2007, the department could have approved and issued the waiver in January 2008, and its failure to do so prejudiced substantial rights of relator.[2]

[2] Although there are no Minnesota cases that have interpreted this provision of this statute, the Wisconsin Court of Appeals was presented with this same question. In *Wis. Dep't of Workforce Dev. v. Labor & Industry Review Comm'n*, 725 N.W.2d 304, 312 (Wis. App. 2006), the Department of Workforce Development (DWD) determined that certain workers seeking TRA benefits were ineligible because they had not obtained training waivers within the time period specified in section 2291(a)(5)(A)(ii) of the Act. The court concluded that the statutory language at issue is ambiguous but did not resolve the ambiguity because it held that the DWD was obligated to follow the DOL's construction of this statute issued in a guidance letter identified as the "Training and Employees Guidance Letter 11-02 Change 1." *Wis. Dep't of Workforce*, 725 N.W.2d at

Because we conclude that the time periods of 19 U.S.C. § 2291(a)(5)(A) do not apply to 19 U.S.C. § 2291(a)(5)(C) and relator can meet the eligibility requirements of 19 U.S.C. § 2291(a)(5) by obtaining a waiver under 19 U.S.C. § 2291(a)(5)(C), we reverse and remand for further proceedings consistent with this opinion.

Reversed and remanded.

308, 312. This letter states that "the 2002 amendment 'imposed a deadline by which a worker must be enrolled in approved training, or have a waiver of this requirement in order to be eligible for [the trade readjustment allowance]' and that '[state agencies] must . . . assist . . . workers in enrolling in an approved training program prior to the [16/8-week] deadline, or issue the workers waivers prior to the [16/8-week] deadline, if appropriate.'" *Id.* at 308. This guidance letter was issued pursuant to an agreement between the State of Wisconsin and the Secretary of Labor designating the state as agent to carry out specified responsibilities under the Act in which the state agreed to follow instructions contained in such guidance letters. *Id.* at 307. The record here does not indicate that the State of Minnesota has received a similar guidance letter from the DOL.