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Creps v. Idaho Dep't of Labor Clerk's Record v. 1 Dckt. 36072

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LAW CLERK

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

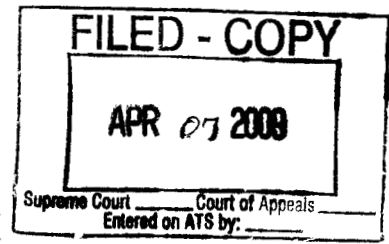
RUTH A. CREPS,)
)
 Claimant/Appellant,)
)
 vs.)
)
 IDAHO DEPARTMENT OF)
 LABOR,)
)
 Respondent.)

SUPREME COURT NO: 36072-2009

AGENCY'S RECORD

For Claimant/Appellant

Ruth A Creps, Pro Se
 1212 N. 5th St
 Boise, Idaho 83702



For Respondent

Katherine Takasugi
 Deputy Attorney General
 Idaho Department of Labor
 317 W. Main St.
 Boise, Idaho 83735

36072

dc COPY

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

RUTH A. CREPS,)
)
 Claimant/Appellant,)
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 vs.)
)
 IDAHO DEPARTMENT OF)
 LABOR,)
)
 Respondent.)
_____)

SUPREME COURT NO: 36072-2009

AGENCY'S RECORD

For Claimant/Appellant

Ruth A Creps, Pro Se
1212 N. 5th St
Boise, Idaho 83702

For Respondent

Katherine Takasugi
Deputy Attorney General
Idaho Department of Labor
317 W. Main St.
Boise, Idaho 83735

 **COPY**

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Hearing Transcript taken on September 25, 2008, will be lodged with the Supreme Court:

Exhibits admitted into record before Idaho Department of Labor

1. Notice of Telephone Hearing, mailed September 6, 2008, 3 pages
2. Important Information about your Hearing Read Carefully, 2 pages
3. Fiscal Year Training Approval 1 page
4. Student Financial Services, Boise State University, Fall 2008 and Spring 2009 1 page
5. Trade Adjustment Assistance/NAFTA Request by Worker For Training Approval and Allowances while in Training, Dated July 24, 2008 1 page
- 5-A Trade Adjustment Assistance/NAFTA Request by Worker For Training Approval and Allowances while in Training, Dated July 24, 2008 1 page
- 5-B. Trade Adjustment Assistance Request by Worker for Training Approval Allowances 1 page
6. Idaho Department of Labor letter dated August 7, 2008 1 page
7. Ruth Creps letter dated August 18, 2008 1 page
8. 20 CFR§ 617 – Trade Adjustment Assistance for Workers Subpart C – Reemployment Services 3 pages
9. Employers Data dated September 29, 2008 1 page

IDAHO DEPARTMENT OF LABOR
APPEALS BUREAU
317 WEST MAIN STREET
BOISE, IDAHO 83735-0720
(208) 332-3572 / (800) 621-4938
FAX: (208) 334-6440

2008 OCT 10 A 11:30

RECEIVED
APPEALS COMMISSION

RUTH A CREPS,

SSN: [REDACTED]

Claimant

vs.

IDAHO DEPARTMENT OF LABOR.

DOCKET NUMBER 8091-T-2008

DECISION OF APPEALS EXAMINER

DECISION

The claimant's request for training is APPROVED.

The Determination denying the request for training dated August 7, 2008, is hereby REVERSED.

HISTORY OF THE CASE

On July 24, 2008, the claimant submitted a request for training pursuant to Trade Adjustment Assistance (TAA). The claimant sought training for the Executive MBA program at Boise State University in Boise, Idaho. The projected cost of the training is \$41,000 over a two year period.

The Department denied the claimant's request on August 7, 2008, determining that the total cost of the training was substantially higher than the cost of other training suitable for the claimant., pursuant to 20 CFR 617.22(6)(iii)(b). The Department determined that a traditional MBA program at Boise State University would only cost \$14,000.00.

On August 19, 2008, the claimant appealed the Department's determination.

The above-entitled matter was heard by Gregory Stevens, Appeals Examiner for the Idaho Department of Labor, on September 25, 2008, by telephone in the City of Boise, in accordance with IDAPA 09.01.60.013.05.

The claimant, Ruth A. Creps, was represented by Tom Tharp. The claimant testified on her own behalf. Cheryl Maille appeared as a witness on behalf of the claimant.

The respondent, Idaho Department of Labor, was represented by Jennifer Hemly, who provided testimony.

Exhibits #1 through #8 were entered into and made a part of the record. The Appeals Examiner takes Office Notice of Department record Employers Data and enters it into the record as Exhibit #9.

ISSUE

The issue before the Appeals Examiner is to determine whether the claimant's request for training meets the criteria provided for in the Trade Act Regulations, 20 CFR 617.22(a)(6)(iii)(B).

FINDINGS OF FACT

Additional facts or testimony may exist in this case. However, the Appeals Examiner outlines only those that are relevant to the decision and those based upon reliable evidence. Based on the exhibits and testimony in the record, the following facts are found:

1. The claimant lost her job with Micron Technology Inc as a program manager in July of 2007. The claimant stated she had earned approximately \$96,000.00 per year with MTI. In her base period (April 2, 2006 – March 31, 2007), the claimant had earned \$89,602.23, with this employer.
2. On July 24, 2008, the claimant submitted a request for training pursuant to TAA for the Executive MBA program at Boise State University. The Department determined that the training program would cost about \$41,000.00 and the claimant would graduate with an MBA degree after two years in the program. Subsequently, the Department determined that the traditional two-year MBA program at Boise State University would cost only \$14,000.00, and the claimant would graduate with the "same" MBA degree. Upon completion of the traditional program, the Department argues the claimant would be in the same position as she would upon completion of the Executive program; arguing that while the "process" is different, and class-sizes are different, the "outcome" is the same – an MBA degree. "Different means to the same end."
3. The claimant asserts the traditional MBA program would have required her to take additional pre-requisite courses and the GMAT; that there is a substantial difference between the two programs, including class size (the current executive program has a class of 18, while the traditional program had during the summer term, five classes of at least thirty students, all of which were full and unavailable); that the Executive program would give credit to the claimant for her prior work and managerial experience, and is geared to the needs of individuals already with at least six years of managerial experience; that the Executive program offers integrated courses designed to offer "real world" application and experience for these managers; and an opportunity for "networking" with established businesses and employers, not otherwise available to a traditional program student.
4. The Executive program cost includes the cost of books, materials, and other fees, which the traditional program does not.
5. The claimant provided wage information indicating that graduates of a traditional MBA program could expect to find entry-level positions in the \$40,000 to \$50,000 range and asserts following graduation from the Executive program, the claimant would be better suited for non-entry level, upper management and executive level positions, at a \$100,000 to \$150,000 range.

6. The claimant's request for training was denied as the Executive training program cost was substantially higher than the cost of other suitable training as required by 20 CFR 617.22.

AUTHORITY

Code of Federal Regulations – 20 CFR 617.22

TITLE 20--EMPLOYEES' BENEFITS

CHAPTER V--EMPLOYMENT AND TRAINING ADMINISTRATION, DEPARTMENT OF LABOR

PART 617 - TRADE ADJUSTMENT ASSISTANCE FOR WORKERS UNDER THE TRADE ACT OF 1974

Subpart C - Reemployment Services

Sec. 617.22 Approval of training.

(a) Conditions for approval. Training shall be approved for an adversely affected worker if the State agency determines that:

(1) There is no suitable employment (which may include technical and professional employment) available for an adversely affected worker.

(i) This means that for the worker for whom approval of training is being considered under this section, no suitable employment is available at that time for that worker, either in the commuting area, as defined in Sec. 617.3(k), or outside the commuting area in an area in which the worker desires to relocate with the assistance of a relocation allowance under subpart E of this part, and there is no reasonable prospect of such suitable employment becoming available for the worker in the foreseeable future. For the purposes of paragraph (a)(1) of this section only, the term "suitable employment" means, with respect to a worker, work of a substantially equal or higher skill level than the worker's past adversely affected employment, and wages for such work at not less than 80 percent of the worker's average weekly wage.

(2) The worker would benefit from appropriate training.

(i) This means that there is a direct relationship between the needs of the worker for skills training or remedial education and what would be provided by the training program under consideration for the worker, and that the worker has the mental and physical capabilities to undertake, make satisfactory progress in, and complete the training. This includes the further criterion that the individual will be job ready on completion of the training program.

(3) There is a reasonable expectation of employment following completion of such training.

(i) This means that, for that worker, given the job market conditions expected to exist at the time of the completion of the training program, there is, fairly and objectively considered, a

reasonable expectation that the worker will find a job, using the skills and education acquired while in training, after completion of the training. Any determination under this criterion must take into account that "a reasonable expectation of employment" does not require that employment opportunities for the worker be available, or offered, immediately upon the completion of the approved training. This emphasizes, rather than negates, the point that there must be a fair and objective projection of job market conditions expected to exist at the time of completion of the training.

(4) Training approved by the Secretary is reasonably available to the worker from either governmental agencies or private sources (which may include area vocational education schools, as defined in section 195(2) of the Vocational Education Act of 1963, and employers).

(i) This means that training is reasonably accessible to the worker within the worker's commuting area at any governmental or private training (or education) provider, particularly including on-the-job training with an employer, and it means training that is suitable for the worker and meets the other criteria in paragraph (a) of this section. It also means that emphasis must be given to finding accessible training for the worker, although not precluding training outside the commuting area if none is available at the time within the worker's commuting area. Whether the training is within or outside the commuting area, the training must be available at a reasonable cost as prescribed in paragraph (a)(6) of this section.

(ii) In determining whether or not training is reasonably available, first consideration shall be given to training opportunities available within the worker's normal commuting area. Training at facilities outside the worker's normal commuting area should be approved only if such training is not available in the area or the training to be provided outside the normal commuting area will involve less charges to TAA funds.

(5) The worker is qualified to undertake and complete such training.

(i) This emphasizes the worker's personal qualifications to undertake and complete approved training. Evaluation of the worker's personal qualifications must include the worker's physical and mental capabilities, educational background, work experience and financial resources, as adequate to undertake and complete the specific training program being considered.

(ii) Evaluation of the worker's financial ability shall include an analysis of the worker's remaining weeks of UI and TRA payments in relation to the duration of the training program. If the worker's UI and TRA payments will be exhausted before the end of the training program, it shall be ascertained whether personal or family resources will be available to the worker to complete the training. It must be noted on the worker's record that financial resources were discussed with the worker before the training was approved.

(iii) When adequate financial resources will not be available to the worker to complete a training program which exceeds the duration of UI and TRA payments, the training shall not be approved and consideration shall be given to other training opportunities available to the worker.

(6) Such training is suitable for the worker and available at a reasonable cost.

(i) Such training means the training being considered for the worker. Suitable for the worker means that paragraph (a)(5) of this section is met and that the training is appropriate for the worker given the worker's capabilities, background and experience.

(ii) Available at a reasonable cost means that training may not be approved at one provider when, all costs being considered, training substantially similar in quality, content and results can be obtained from another provider at a lower total cost within a similar time frame. It also means that training may not be approved when the costs of the training are unreasonably high in comparison with the average costs of training other workers in similar occupations at other providers. This criterion also requires taking into consideration the funding of training costs from sources other than TAA funds, and the least cost to TAA funding of providing suitable training opportunities to the worker. Greater emphasis will need to be given to these elements in determining the reasonable costs of training, particularly in view of the requirements in Sec. 617.11(a) (2) and (3) that TRA claimants be enrolled in and participate in training.

(iii) For the purpose of determining reasonable costs of training, the following elements shall be considered:

(A) Costs of a training program shall include tuition and related expenses (books, tools, and academic fees), travel or transportation expenses, and subsistence expenses;

(B) In determining whether the costs of a particular training program are reasonable, first consideration must be given to the lowest cost training which is available within the commuting area. When training, substantially similar in quality, content and results, is offered at more than one training provider, the lowest cost training shall be approved; and

(C) Training at facilities outside the worker's normal commuting area that involves transportation or subsistence costs which add substantially to the total costs shall not be approved if other appropriate training is available.

(b) Allowable amounts for training. In approving a worker's application for training, the conditions for approval in paragraph (a) of this section must be found to be satisfied, including assurance that the training is suitable for the worker, is at the lowest reasonable cost, and will enable the worker to obtain employment within a reasonable period of time. An application for training shall be denied if it is for training in an occupational area which requires an extraordinarily high skill level and for which the total costs of the training are substantially higher than the costs of other training which is suitable for the worker.

(c) Previous approval of training under State law. Training previously approved for a worker under State law or other authority is not training approved under paragraph (a) of this section. Any such training may be approved under paragraph (a) of this section, if all of the requirements and limitations of paragraph (a) of this section and other provisions of Subpart C of this part are met, but such approval shall not be retroactive for any of the purposes of this Part 617, including payment of the costs of the training and payment of TRA to the worker participating in the training. However, in the case of a redetermination or decision reversing a determination denying approval of training, for the purposes of this Part 617 such redetermination or decision shall be given effect retroactive to the issuance of the determination that was reversed by such redetermination or decision; but no costs of training may be paid unless such costs actually were

incurred for training in which the individual participated, and no additional TRA may be paid with respect to any week the individual was not actually participating in the training.

(d) Applications. Applications for, selection for, approval of, or referral to training shall be filed in accordance with this subpart C and on forms which shall be furnished to individuals by the State agency.

(e) Determinations. Selection for, approval of, or referral of an individual to training under this subpart C, or a decision with respect to any specific training or non-selection, non-approval, or non-referral for any reason shall be a determination to which Sec. Sec. 617.50 and 617.51 apply.

(f) Length of training and hours of attendance. The State agency shall determine the appropriateness of the length of training and the hours of attendance as follows:

(1) The training shall be of suitable duration to achieve the desired skill level in the shortest possible time;

(2) Length of training. The maximum duration for any approvable training program is 104 weeks (during which training is conducted) and no individual shall be entitled to more than one training program under a single certification.

(3) Training program.

(i) For purposes of this Part 617, a training program may consist of a single course or group of courses which is designed and approved by the State agency for an individual to meet a specific occupational goal.

(ii) When an approved training program involves more than one course and involves breaks in training (within or between courses, or within or between terms, quarters, semesters and academic years), all such breaks in training are subject to the "14-day break in training" provision in Sec. 617.15(d), for purposes of receiving TRA payments. An individual's approved training program may be amended by the State agency to add a course designed to satisfy unforeseen needs of the individual, such as remedial education or specific occupational skills, as long as the length of the amended training program does not exceed the 104-week training limitation in paragraph (f)(2) of this section.

(4) Full-time training. Individuals in TAA approved training shall attend training full time, and when other training is combined with OJT attendance at both shall be not less than full-time. The hours in a day and days in a week of attendance in training shall be full-time in accordance with established hours and days of training of the training provider.

(g) Training of reemployed workers. Adversely affected workers who obtain new employment which is not suitable employment, as described in Sec. 617.22(a)(1), and have been approved for training may elect to:

(1) Terminate their jobs, or

(2) Continue in full- or part-time employment, to undertake such training, and shall not be subject to ineligibility or disqualification for UI or TRA as a result of such termination or reduction in employment.

(h) Fees prohibited. In no case shall an individual be approved for training under this subpart C for which the individual is required to pay a fee or tuition.

(i) Training outside the United States. In no case shall an individual be approved for training under this subpart C which is conducted totally or partially at a location outside the United States.

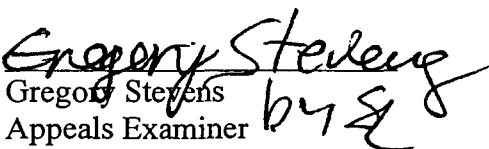
CONCLUSIONS

The goal of the Trade Act programs, including TAA, is to “help trade-affected workers return to suitable employment as quickly as possible.” To assist eligible claimants, the TAA provides for training services to “certified workers who do not have the skills to secure suitable employment in the existing labor market.” Training is targeted to a specific occupation and provided to help certified workers secure employment **at a skill level similar to or higher** than their layoff employment, and sustain that employment at the best wage available.

However, 20 CFR 617.22 imposes certain limitations on the training the Department can provide under TAA. The training must be “of the shortest duration necessary to return the individual to employment,” be “suitable for the worker,” and “available at a reasonable cost.” The regulation also provides that “reasonable cost” means that training cannot be approved by a provider, when, substantially similar training in **content, quality, and result**, can be obtained at a lower cost.

After reviewing the record, the Appeals Examiner concludes that the two programs are not equal in content and quality, and although the result in obtaining an MBA degree is the same, the MBA degrees are not “equal” in every way as the Department asserts. Further, in comparing the wages resulting from employment of each of the training programs to the claimant’s previous earnings, the traditional MBA program will likely not meet the stated goal of the Trade Act of getting the claimant to a similar or higher level of employment. The goal of the Trade Act programs, including TAA, is to make the claimant whole, again to help workers secure employment at a skill level similar to their layoff employment. The Executive MBA program will better allow the claimant to reach this goal.

The decision of the Appeals Examiner, therefore, is to approve the claimant’s request for these training services pursuant to the requirements of 20 CFR 617.22.


Gregory Stevens
Appeals Examiner

Date of Mailing September 29, 2008 **Last Day To Appeal** October 14, 2008

APPEAL RIGHTS

You have FOURTEEN (14) DAYS FROM THE DATE OF MAILING to file a written appeal with the Idaho Industrial Commission. The appeal must be mailed to:

Idaho Industrial Commission
Judicial Division, IDOL Appeals
P.O. Box 83720
Boise, Idaho 83720-0041

Or delivered in person to:

Idaho Industrial Commission
700 S Clearwater Lane
Boise, ID 83712

Or transmitted by facsimile to:

(208) 332-7558.

If the appeal is mailed, it must be postmarked no later than the last day to appeal. An appeal filed by facsimile transmission must be received by the Commission by 5:00 p.m., Mountain Time, on the last day to appeal. A facsimile transmission received after 5:00 p.m. will be deemed received by the Commission on the next business day. A late appeal will be dismissed. Appeals filed by any means with the Appeals Bureau or a Department of Labor local office will not be accepted by the Commission. ***TO EMPLOYERS WHO ARE INCORPORATED:*** *If you file an appeal with the Idaho Industrial Commission, the appeal must be signed by a corporate officer or legal counsel licensed to practice in the State of Idaho and the signature must include the individual's title. The Commission will not consider appeals submitted by employer representatives who are not attorneys. If you request a hearing before the Commission or permission to file a legal brief, you must make these requests through legal counsel licensed to practice in the State of Idaho. Questions should be directed to the Idaho Industrial Commission, Unemployment Appeals, (208) 334-6024.*

If no appeal is filed, this decision will become final and cannot be changed. **TO CLAIMANT:** If this decision is changed, any benefits paid will be subject to repayment. If an appeal is filed, you should continue to report on your claim as long as you are unemployed.

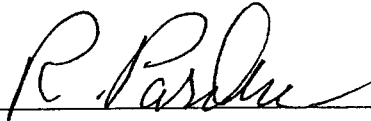
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(208) 332-3572 / (800) 621-4938
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CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2008, a true and correct copy of **Decision of Appeals Examiner** was served by regular United States mail upon each of the following:

RUTH A CREPS
1212 N 5TH
BOISE ID 83706

ATTN: JENNIFER HEMLY
TRADE ACT – TAA COORDINATOR
WORKFORCE SYSTEMS
IDAHO DEPARTMENT OF LABOR
317 W MAIN ST
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IDAHO

DEPARTMENT OF LABOR

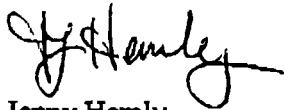
C.L. "BUTCH" OTTER, GOVERNOR
ROGER B. MADSEN, DIRECTOR

October 6, 2008

Idaho Industrial Commission
Judicial Division, IDOL Appeals
PO Box 83720
Boise, ID 83720-0041
Fax- 332-7558

Idaho Department of Labor would like to appeal decision docket number 8091-T-2008. Listed below are the specific issues the department has with Ms. Creps request to attend the Executive MBA program at BSU. These issues are not currently listed in the appeal packet.

- No documentation has been provided to show that employers are looking for Executive MBA (EMBA) graduates vs. traditional MBA graduates.
- Cheryl Maille provided biased testimony on the EMBA program.
- The outcome of the EMBA program and MBA program is the same.
- Jobs listing requiring an MBA also require 5-7 years experience; these are not entry level positions as stated by the participant.
- No documentation has been provided to show the executive level positions in the \$100,000-\$150,000 salary range locally; the participant is not willing to relocate.



Jenny Hemly
TAA Coordinator-Reg 4 Liaison
Idaho Department of Labor
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jennifer.hemly@labor.id.gov

INDUSTRIAL COMMISSION

OCT - 6 2008

FILED

IDAHO DEPARTMENT OF LABOR
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BOISE, IDAHO 83735-0720
(208) 332-3572 / (800) 621-4938
FAX: (208) 334-6440

RUTH A CREPS,)
SSN: [REDACTED])
Claimant)
vs.)
IDAHO DEPARTMENT OF LABOR.)

DOCKET NUMBER 8091-T-2008
DECISION OF APPEALS EXAMINER

DECISION

The claimant's request for training is **APPROVED**.

The Determination denying the request for training dated August 7, 2008, is hereby **REVERSED**.

HISTORY OF THE CASE

On July 24, 2008, the claimant submitted a request for training pursuant to Trade Adjustment Assistance (TAA). The claimant sought training for the Executive MBA program at Boise State University in Boise, Idaho. The projected cost of the training is \$41,000 over a two year period.

The Department denied the claimant's request on August 7, 2008, determining that the total cost of the training was substantially higher than the cost of other training suitable for the claimant., pursuant to 20 CFR 617.22(6)(iii)(b). The Department determined that a traditional MBA program at Boise State University would only cost \$14,000.00.

On August 19, 2008, the claimant appealed the Department's determination.

The above-entitled matter was heard by Gregory Stevens, Appeals Examiner for the Idaho Department of Labor, on September 25, 2008, by telephone in the City of Boise, in accordance with IDAPA 09.01.60.013.05.

The claimant, Ruth A. Creps, was represented by Tom Tharp. The claimant testified on her own behalf. Cheryl Maille appeared as a witness on behalf of the claimant.

The respondent, Idaho Department of Labor, was represented by Jennifer Hemly, who provided testimony.

Exhibits #1 through #8 were entered into and made a part of the record. The Appeals Examiner takes Office Notice of Department record Employers Data and enters it into the record as Exhibit #9.

ISSUE

The issue before the Appeals Examiner is to determine whether the claimant's request for training meets the criteria provided for in the Trade Act Regulations, 20 CFR 617.22(a)(6)(iii)(B).

FINDINGS OF FACT

Additional facts or testimony may exist in this case. However, the Appeals Examiner outlines only those that are relevant to the decision and those based upon reliable evidence. Based on the exhibits and testimony in the record, the following facts are found:

1. The claimant lost her job with Micron Technology Inc as a program manager in July of 2007. The claimant stated she had earned approximately \$96,000.00 per year with MTI. In her base period (April 2, 2006 – March 31, 2007), the claimant had earned \$89,602.23, with this employer.
2. On July 24, 2008, the claimant submitted a request for training pursuant to TAA for the Executive MBA program at Boise State University. The Department determined that the training program would cost about \$41,000.00 and the claimant would graduate with an MBA degree after two years in the program. Subsequently, the Department determined that the traditional two-year MBA program at Boise State University would cost only \$14,000.00, and the claimant would graduate with the "same" MBA degree. Upon completion of the traditional program, the Department argues the claimant would be in the same position as she would upon completion of the Executive program; arguing that while the "process" is different, and class-sizes are different, the "outcome" is the same – an MBA degree. "Different means to the same end."
3. The claimant asserts the traditional MBA program would have required her to take additional pre-requisite courses and the GMAT; that there is a substantial difference between the two programs, including class size (the current executive program has a class of 18, while the traditional program had during the summer term, five classes of at least thirty students, all of which were full and unavailable); that the Executive program would give credit to the claimant for her prior work and managerial experience, and is geared to the needs of individuals already with at least six years of managerial experience; that the Executive program offers integrated courses designed to offer "real world" application and experience for these managers; and an opportunity for "networking" with established businesses and employers, not otherwise available to a traditional program student.
4. The Executive program cost includes the cost of books, materials, and other fees, which the traditional program does not.
5. The claimant provided wage information indicating that graduates of a traditional MBA program could expect to find entry-level positions in the \$40,000 to \$50,000 range and asserts following graduation from the Executive program, the claimant would be better suited for non-entry level, upper management and executive level positions, at a \$100,000 to \$150,000 range.

6. The claimant's request for training was denied as the Executive training program cost was substantially higher than the cost of other suitable training as required by 20 CFR 617.22.

AUTHORITY

Code of Federal Regulations – 20 CFR 617.22

TITLE 20--EMPLOYEES' BENEFITS

CHAPTER V--EMPLOYMENT AND TRAINING ADMINISTRATION, DEPARTMENT OF LABOR

PART 617 - TRADE ADJUSTMENT ASSISTANCE FOR WORKERS UNDER THE TRADE ACT OF 1974

Subpart C - Reemployment Services

Sec. 617.22 Approval of training.

(a) Conditions for approval. Training shall be approved for an adversely affected worker if the State agency determines that:

(1) There is no suitable employment (which may include technical and professional employment) available for an adversely affected worker.

(i) This means that for the worker for whom approval of training is being considered under this section, no suitable employment is available at that time for that worker, either in the commuting area, as defined in Sec. 617.3(k), or outside the commuting area in an area in which the worker desires to relocate with the assistance of a relocation allowance under subpart E of this part, and there is no reasonable prospect of such suitable employment becoming available for the worker in the foreseeable future. For the purposes of paragraph (a)(1) of this section only, the term "suitable employment" means, with respect to a worker, work of a substantially equal or higher skill level than the worker's past adversely affected employment, and wages for such work at not less than 80 percent of the worker's average weekly wage.

(2) The worker would benefit from appropriate training.

(i) This means that there is a direct relationship between the needs of the worker for skills training or remedial education and what would be provided by the training program under consideration for the worker, and that the worker has the mental and physical capabilities to undertake, make satisfactory progress in, and complete the training. This includes the further criterion that the individual will be job ready on completion of the training program.

(3) There is a reasonable expectation of employment following completion of such training.

(i) This means that, for that worker, given the job market conditions expected to exist at the time of the completion of the training program, there is, fairly and objectively considered, a

reasonable expectation that the worker will find a job, using the skills and education acquired while in training, after completion of the training. Any determination under this criterion must take into account that "a reasonable expectation of employment" does not require that employment opportunities for the worker be available, or offered, immediately upon the completion of the approved training. This emphasizes, rather than negates, the point that there must be a fair and objective projection of job market conditions expected to exist at the time of completion of the training.

(4) Training approved by the Secretary is reasonably available to the worker from either governmental agencies or private sources (which may include area vocational education schools, as defined in section 195(2) of the Vocational Education Act of 1963, and employers).

(i) This means that training is reasonably accessible to the worker within the worker's commuting area at any governmental or private training (or education) provider, particularly including on-the-job training with an employer, and it means training that is suitable for the worker and meets the other criteria in paragraph (a) of this section. It also means that emphasis must be given to finding accessible training for the worker, although not precluding training outside the commuting area if none is available at the time within the worker's commuting area. Whether the training is within or outside the commuting area, the training must be available at a reasonable cost as prescribed in paragraph (a)(6) of this section.

(ii) In determining whether or not training is reasonably available, first consideration shall be given to training opportunities available within the worker's normal commuting area. Training at facilities outside the worker's normal commuting area should be approved only if such training is not available in the area or the training to be provided outside the normal commuting area will involve less charges to TAA funds.

(5) The worker is qualified to undertake and complete such training.

(i) This emphasizes the worker's personal qualifications to undertake and complete approved training. Evaluation of the worker's personal qualifications must include the worker's physical and mental capabilities, educational background, work experience and financial resources, as adequate to undertake and complete the specific training program being considered.

(ii) Evaluation of the worker's financial ability shall include an analysis of the worker's remaining weeks of UI and TRA payments in relation to the duration of the training program. If the worker's UI and TRA payments will be exhausted before the end of the training program, it shall be ascertained whether personal or family resources will be available to the worker to complete the training. It must be noted on the worker's record that financial resources were discussed with the worker before the training was approved.

(iii) When adequate financial resources will not be available to the worker to complete a training program which exceeds the duration of UI and TRA payments, the training shall not be approved and consideration shall be given to other training opportunities available to the worker.

(6) Such training is suitable for the worker and available at a reasonable cost.

(i) Such training means the training being considered for the worker. Suitable for the worker means that paragraph (a)(5) of this section is met and that the training is appropriate for the worker given the worker's capabilities, background and experience.

(ii) Available at a reasonable cost means that training may not be approved at one provider when, all costs being considered, training substantially similar in quality, content and results can be obtained from another provider at a lower total cost within a similar time frame. It also means that training may not be approved when the costs of the training are unreasonably high in comparison with the average costs of training other workers in similar occupations at other providers. This criterion also requires taking into consideration the funding of training costs from sources other than TAA funds, and the least cost to TAA funding of providing suitable training opportunities to the worker. Greater emphasis will need to be given to these elements in determining the reasonable costs of training, particularly in view of the requirements in Sec. 617.11(a) (2) and (3) that TRA claimants be enrolled in and participate in training.

(iii) For the purpose of determining reasonable costs of training, the following elements shall be considered:

(A) Costs of a training program shall include tuition and related expenses (books, tools, and academic fees), travel or transportation expenses, and subsistence expenses;

(B) In determining whether the costs of a particular training program are reasonable, first consideration must be given to the lowest cost training which is available within the commuting area. When training, substantially similar in quality, content and results, is offered at more than one training provider, the lowest cost training shall be approved; and

(C) Training at facilities outside the worker's normal commuting area that involves transportation or subsistence costs which add substantially to the total costs shall not be approved if other appropriate training is available.

(b) Allowable amounts for training. In approving a worker's application for training, the conditions for approval in paragraph (a) of this section must be found to be satisfied, including assurance that the training is suitable for the worker, is at the lowest reasonable cost, and will enable the worker to obtain employment within a reasonable period of time. An application for training shall be denied if it is for training in an occupational area which requires an extraordinarily high skill level and for which the total costs of the training are substantially higher than the costs of other training which is suitable for the worker.

(c) Previous approval of training under State law. Training previously approved for a worker under State law or other authority is not training approved under paragraph (a) of this section. Any such training may be approved under paragraph (a) of this section, if all of the requirements and limitations of paragraph (a) of this section and other provisions of Subpart C of this part are met, but such approval shall not be retroactive for any of the purposes of this Part 617, including payment of the costs of the training and payment of TRA to the worker participating in the training. However, in the case of a redetermination or decision reversing a determination denying approval of training, for the purposes of this Part 617 such redetermination or decision shall be given effect retroactive to the issuance of the determination that was reversed by such redetermination or decision; but no costs of training may be paid unless such costs actually were

incurred for training in which the individual participated, and no additional TRA may be paid with respect to any week the individual was not actually participating in the training.

(d) Applications. Applications for, selection for, approval of, or referral to training shall be filed in accordance with this subpart C and on forms which shall be furnished to individuals by the State agency.

(e) Determinations. Selection for, approval of, or referral of an individual to training under this subpart C, or a decision with respect to any specific training or non-selection, non-approval, or non-referral for any reason shall be a determination to which Sec. Sec. 617.50 and 617.51 apply.

(f) Length of training and hours of attendance. The State agency shall determine the appropriateness of the length of training and the hours of attendance as follows:

(1) The training shall be of suitable duration to achieve the desired skill level in the shortest possible time;

(2) Length of training. The maximum duration for any approvable training program is 104 weeks (during which training is conducted) and no individual shall be entitled to more than one training program under a single certification.

(3) Training program.

(i) For purposes of this Part 617, a training program may consist of a single course or group of courses which is designed and approved by the State agency for an individual to meet a specific occupational goal.

(ii) When an approved training program involves more than one course and involves breaks in training (within or between courses, or within or between terms, quarters, semesters and academic years), all such breaks in training are subject to the "14-day break in training" provision in Sec. 617.15(d), for purposes of receiving TRA payments. An individual's approved training program may be amended by the State agency to add a course designed to satisfy unforeseen needs of the individual, such as remedial education or specific occupational skills, as long as the length of the amended training program does not exceed the 104-week training limitation in paragraph (f)(2) of this section.

(4) Full-time training. Individuals in TAA approved training shall attend training full time, and when other training is combined with OJT attendance at both shall be not less than full-time. The hours in a day and days in a week of attendance in training shall be full-time in accordance with established hours and days of training of the training provider.

(g) Training of reemployed workers. Adversely affected workers who obtain new employment which is not suitable employment, as described in Sec. 617.22(a)(1), and have been approved for training may elect to:

(1) Terminate their jobs, or

(2) Continue in full- or part-time employment, to undertake such training, and shall not be subject to ineligibility or disqualification for UI or TRA as a result of such termination or reduction in employment.

(h) Fees prohibited. In no case shall an individual be approved for training under this subpart C for which the individual is required to pay a fee or tuition.

(i) Training outside the United States. In no case shall an individual be approved for training under this subpart C which is conducted totally or partially at a location outside the United States.

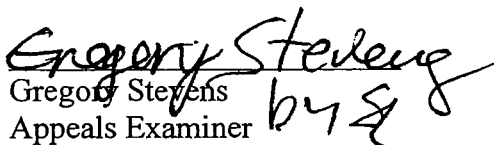
CONCLUSIONS

The goal of the Trade Act programs, including TAA, is to “help trade-affected workers return to suitable employment as quickly as possible.” To assist eligible claimants, the TAA provides for training services to “certified workers who do not have the skills to secure suitable employment in the existing labor market.” Training is targeted to a specific occupation and provided to help certified workers secure employment **at a skill level similar to or higher** than their layoff employment, and sustain that employment at the best wage available.

However, 20 CFR 617.22 imposes certain limitations on the training the Department can provide under TAA. The training must be “of the shortest duration necessary to return the individual to employment,” be “suitable for the worker,” and “available at a reasonable cost.” The regulation also provides that “reasonable cost” means that training cannot be approved by a provider, when, substantially similar training in **content, quality, and result**, can be obtained at a lower cost.

After reviewing the record, the Appeals Examiner concludes that the two programs are not equal in content and quality, and although the result in obtaining an MBA degree is the same, the MBA degrees are not “equal” in every way as the Department asserts. Further, in comparing the wages resulting from employment of each of the training programs to the claimant’s previous earnings, the traditional MBA program will likely not meet the stated goal of the Trade Act of getting the claimant to a similar or higher level of employment. The goal of the Trade Act programs, including TAA, is to make the claimant whole, again to help workers secure employment at a skill level similar to their layoff employment. The Executive MBA program will better allow the claimant to reach this goal.

The decision of the Appeals Examiner, therefore, is to approve the claimant’s request for these training services pursuant to the requirements of 20 CFR 617.22.


Gregory Stevens
Appeals Examiner

Date of Mailing September 29, 2008 Last Day To Appeal October 14, 2008

APPEAL RIGHTS

You have FOURTEEN (14) DAYS FROM THE DATE OF MAILING to file a written appeal with the Idaho Industrial Commission. The appeal must be mailed to:

Idaho Industrial Commission
Judicial Division, IDOL Appeals
P.O. Box 83720
Boise, Idaho 83720-0041

Or delivered in person to:

Idaho Industrial Commission
700 S Clearwater Lane
Boise, ID 83712

Or transmitted by facsimile to:

(208) 332-7558.

If the appeal is mailed, it must be postmarked no later than the last day to appeal. An appeal filed by facsimile transmission must be received by the Commission by 5:00 p.m., Mountain Time, on the last day to appeal. A facsimile transmission received after 5:00 p.m. will be deemed received by the Commission on the next business day. A late appeal will be dismissed. Appeals filed by any means with the Appeals Bureau or a Department of Labor local office will not be accepted by the Commission. ***TO EMPLOYERS WHO ARE INCORPORATED:*** *If you file an appeal with the Idaho Industrial Commission, the appeal must be signed by a corporate officer or legal counsel licensed to practice in the State of Idaho and the signature must include the individual's title. The Commission will not consider appeals submitted by employer representatives who are not attorneys. If you request a hearing before the Commission or permission to file a legal brief, you must make these requests through legal counsel licensed to practice in the State of Idaho. Questions should be directed to the Idaho Industrial Commission, Unemployment Appeals, (208) 334-6024.*

If no appeal is filed, this decision will become final and cannot be changed. **TO CLAIMANT:** If this decision is changed, any benefits paid will be subject to repayment. If an appeal is filed, you should continue to report on your claim as long as you are unemployed.

IDAHO DEPARTMENT OF LABOR
APPEALS BUREAU
317 WEST MAIN STREET
BOISE, IDAHO 83735-0720
(208) 332-3572 / (800) 621-4938
FAX: (208) 334-6440

CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2008, a true and correct copy of **Decision of Appeals Examiner** was served by regular United States mail upon each of the following:

RUTH A CREPS
1212 N 5TH
BOISE ID 83706

ATTN: JENNIFER HEMLY
TRADE ACT – TAA COORDINATOR
WORKFORCE SYSTEMS
IDAHO DEPARTMENT OF LABOR
317 W MAIN ST
BOISE ID 83735-0790



09/29/08 EMPLOYERS DATA (04)

SSN: [REDACTED] 2 NAME: RUTH A CREPS
NO. OF EMPLOYERS: 01

BYE: 07/05/08

EMPL: 01	ACCOUNT: 0001045873	334413
	WAGES	LAG QTRS
2ND QTR 2006:	21106.51	.00
3RD QTR 2006:	24662.55	.00
4TH QTR 2006:	20972.67	
1ST QTR 2007:	22860.50	
TOTAL	89602.23	

NAME: MICRON TECHNOLOGY INC
 USED IN MONETARY : Y
 UND INV : N
 WAGE REQUEST DATE:
 WAGE ENTRY DATE : 07/09/07
 AFFIDAVIT : N
 COVERAGE CODE : 00

FOR MORE THAN 2 EMPLOYERS DEPRESS PF2

TRANSACTION OPTION:

EXHIBIT # 9
 Page of Pages

20

09/29/08

E M P L O Y E R S D A T A (04)

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FOR MORE THAN 2 EMPLOYERS DEPRESS PF2

TRANSACTION OPTION:

EXHIBIT # 9
 Page of Pages
 21

APPEALS BUREAU
IDAHO DEPARTMENT OF LABOR
317 WEST MAIN STREET / BOISE, IDAHO 83735-0720
(208) 332-3572 / (800) 621-4938
FAX: (208) 334-6440

RUTH A. CREPS,
SSN: [REDACTED]
Claimant

vs.

IDAHO DEPARTMENT OF LABOR

)
)
) DOCKET NUMBER 8091-T-2008
)
)

) NOTICE OF TELEPHONE HEARING
)
)

PLEASE NOTE: THE APPEALS BUREAU OFFICE IS LOCATED IN BOISE, IDAHO, WHICH IS IN THE MOUNTAIN TIME ZONE. PARTIES MUST MAKE ANY NECESSARY ADJUSTMENT FOR THEIR OWN TIME ZONE.

THIS HEARING WILL BEGIN at 10:00 a.m. MOUNTAIN TIME on Thursday, September 25, 2008. The Appeals Examiner will be Gregory B. Stevens.

This hearing is to determine whether the claimant's request for training meets the criteria provided in the Trade Act Regulations, 20 CFR 617.22 (a)(6)(iii)(B).

IMPORTANT INSTRUCTIONS FOR YOUR HEARING

Ruth A. Creps / Idaho Department of Labor – J. Hemly: At the time scheduled for your hearing, please call 364-7789 or toll-free 1-800-621-4938. When prompted, enter Meeting ID number **80912** followed by the "#" key. Follow the instructions as indicated. Once you have announced yourself and selected #, you will then be connected with the conference. The hearing will begin promptly, so it is suggested that you call a few minutes prior to the start of the hearing. **{NOTE: Idaho Department of Labor: Dial IP x 6823 to participate.}** ** IF YOU ARE UNABLE TO ACCESS THE CONFERENCE, IMMEDIATELY TELEPHONE THE APPEALS BUREAU AT (208)332-3572 OR 1-800- 621-4938 and **select 0.****

You must call at the time scheduled for your hearing if you wish to participate. The Appeals Examiner will NOT call you for the hearing. Failure to follow the instructions on this Notice may result in the DISMISSAL of your appeal or FORFEITURE of your right to participate in the hearing.

Secondary witnesses should **not** call and connect with the conference at the beginning of the hearing. Additional witnesses will be called at a later time in the hearing, if necessary.

The Appeals Examiner assigned to your case MAY NOT HAVE CONTACT WITH YOU OR ANY OTHER PARTY TO THIS CASE OUTSIDE OF THE HEARING AND WHICH IS NOT RECORDED. If you have any questions about the hearing procedure or do not understand the instructions in this Notice or in the attached Brochure, you may inquire with the clerical personnel of the Appeals Bureau or any other available Appeals Examiner.

September 16, 2008

DATE MAILED

APPEALS BUREAU
IDAHO DEPARTMENT OF LABOR
317 WEST MAIN STREET / BOISE, IDAHO 83735-0720
(208) 332-3572 / (800) 621-4938
FAX: (208) 334-6440

CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2008, a true and correct copy of **NOTICE OF TELEPHONE HEARING** was served by regular United States mail upon each of the following:

RUTH A CREPS
1212 N 5TH
BOISE ID 83706

ATTN: JENNIFER HEMLY
TRADE ACT - TAA COORDINATOR
WORKFORCE SYSTEMS
IDAHO DEPARTMENT OF LABOR
317 W MAIN ST
BOISE ID 83735-0790



IDAHO

COMMERCE & LABOR

DIRK KEMPTHORNE, GOVERNOR
ROGER MADSEN, DIRECTOR

Date: November 16, 2004 TAAP #02-05

To: Area Managers; Commerce and Labor Managers

From: Cheryl A. Brush, *CA* Chief, Workforce Systems Bureau

Subject: Fiscal Year Training Approval

Currently, case managers are required to obtain training approval from the TAA Coordinator if the cost of tuition, books and tools exceeds \$6,000 per fiscal year. After considerable research and deliberation regarding this approval limit, we determined that this standard was too low in that it did not identify those programs with extraordinary costs. It was not our intent to require approval of programs that are considered standard at public educational institutions. Therefore, effective immediately, the TAA Coordinator will be required to approve training plans (to include tuition, books and tools) that exceed \$8,000 per fiscal year.

The soft cap for the entire training program, again which includes tuition, books and tools, will remain at \$16,000. Subsistence and transportation are not included in the \$16,000 soft cap. Approval from the TAA Coordinator will be required for training programs that exceed the \$16,000 soft cap.

Please direct questions in regards to the above to:

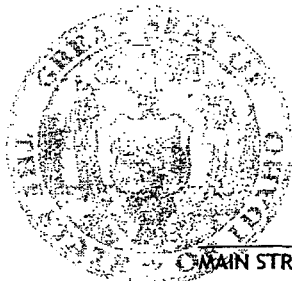
Primary: Jennifer Hemly; (208) 332-3570 extension 3480; jhemly@cl.idaho.gov

Secondary: Jeanie Irvine; (208) 332-3570 extension 3323; jirvine@cl.idaho.gov

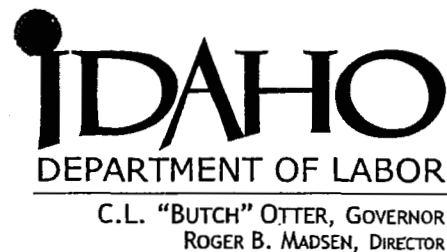
Approved:

John McAllister
John McAllister, Deputy Director

Judy Welker
Judy Welker, Field Services Administrator



APPEALS BUREAU
317 W MAIN ST
BOISE ID 83735-0720
(208) 332-3575
Toll Free Number 1-800-621-4938
Fax (208) 334-6440



September 19, 2008

RUTH A CREPS
1212 N 5TH
BOISE ID 83706

ATTN: JENNIFER HEMLY
TRADE ACT - TAA COORDINATOR
WORKFORCE SYSTEMS
IDAHO DEPARTMENT OF LABOR
317 W MAIN ST
BOISE ID 83735-0790

RECEIVED

SEP 22 2008

RE: Hearing for Docket No. 8091-T-2008

Dear interested parties:

Enclosed please find Exhibit 2, which was inadvertently left out of the Notice of Telephone Hearing packet that was mailed on September 16, 2008. The claimant requested a complete copy of Exhibit 5, as the bottom and right side of the document appears to be missing in part. I was unable to get a better copy of Exhibit 5. However, I've included what I was able to obtain, as well as a blank copy of this document so that you may see the wording in its entirety as it appears on that document (marked as Exhibit 5-A and Exhibit 5-B respectively). Please have these documents with you, along with the other documents that were previously mailed, for the scheduled hearing on Thursday, September 25, 2008 at 10:00 a.m. Mountain Time.

Thank you,

Stephanie Little
Sr., Appeals Technician

Enclosure(s)



**IMPORTANT INFORMATION ABOUT YOUR HEARING
READ CAREFULLY**

The Appeals Bureau's phone number is (208) 332-3572 or toll-free 1-800-621-4938 select 0, and the Appeals Bureau's FAX number is (208) 334-6440. The mailing address is 317 West Main Street, Boise, Idaho 83735-0720. The website address is labor.idaho.gov. Any Idaho Department of Labor Office will help you with phoning, faxing or mailing information to the Appeals Bureau.

IMPORTANCE OF THE APPEAL HEARING

The Appeal Hearing **MAY** be your only chance to present witnesses and give evidence about your side of the issue. Except in rare circumstances, you will not be allowed to present additional evidence upon further appeal. The Appeals Examiner will make a **new** decision in your case based on the sworn testimony during the hearing.

THE HEARING

BE ON TIME! BE READY! If you are not, the hearing will go on without you. The Notice of Telephone hearing provides the time for the Appeals Bureau office located in Boise, Idaho, which is in Mountain Time. **Parties must make the necessary adjustments with their own time zone.** Hearings are conducted in an informal but orderly manner. All testimony is taken under oath or affirmation. The hearing is recorded.

The Appeals Examiner has the sole authority for the conduct of the hearing, and will:

1. Explain the issues and the meanings of terms that you do not understand.
2. Explain the order in which you will testify, ask questions and offer opportunity for rebuttal.
3. Assist you in asking questions of witnesses.
4. Question you and your witnesses to obtain relevant facts.
5. Determine if testimony and document(s) being offered are relevant.
6. Maintain control of the hearing so it will progress in an orderly manner, protect your rights, and be completed without delay.
7. Issue a written decision following the hearing.

You have these rights in a hearing:

1. To have a representative.
2. To object to proposed exhibits.
3. To testify.
4. To present witnesses and documents.
5. To question witnesses.
6. To respond to the evidence presented.
7. To make a brief statement of your position at the end of the hearing.

EVIDENCE

Any documents that **YOU** want considered at the hearing must be submitted immediately to the Appeals Bureau and all other interested parties of the case. Since this is a **NEW** proceeding, information submitted for the Determination being protested may not have been forwarded to the Appeals Bureau. Please review the documents in this packet. If a document critical to your position is not included, you may get it into the record by providing a copy to the Appeals Bureau AND all interested parties.

TELEPHONE HEARINGS

At the time scheduled for your hearing, please call **364-7789** in the Boise area, or toll free **1-800-621-4938**. The hearing will begin promptly, so it is suggested that you call a few minutes prior to the start of the hearing.

You must call at the time scheduled for your hearing if you wish to participate. The Appeals Examiner will **NOT** telephone you for the hearing. Failure to follow the instructions on this Notice may result in the dismissal of your appeal or forfeiture of your right to participate in the hearing.

Secondary witnesses should not call and connect with the conference at the beginning of the hearing. Additional witnesses will be called at a later time in the hearing, if necessary.

If you have no convenient phone, you make arrangements to use a phone at local Idaho Department of Labor Office. It is the responsibility of the parties to have a functioning telephone or to make suitable arrangements to participate and maintain connectivity to the hearing. The hearing does not delay or stop if a party is disconnected.

ACCOMMODATIONS

If you need assistance to participate in the hearing because of speech, hearing, language or other special needs, immediately call or have someone call the Appeals Bureau at (208) 332-3572 or 1-800-621-4938 so arrangements can be made to assist you.

SECONDARY WITNESSES

If you intend to call witnesses, it is your responsibility to have your witnesses available on the date and time of the hearing. The best witnesses are people who actually saw or heard the incident(s) involved in your claim, since hearsay is less reliable. The Appeals Examiner will take the testimony of only one or two witnesses to any event. Witnesses will only be allowed if their testimony is **relevant** to any fact in dispute. If your witnesses are present with you when the hearing begins, have them wait in another room until it is time for their testimony, so that their testimony will be based on what they knew about the employment rather than what has been said at the hearing. Call the Appeals Bureau at (208) 332-3572 or 1-800-621-4938 select 0 prior to the hearing and provide names and phone numbers of your witnesses.

SUBPOENAS

If your witnesses are unwilling to appear voluntarily or document(s) will not be provided voluntarily, you may request the Appeals Bureau to issue a subpoena. You must make your request as soon as possible. You will be required to explain why the witness or document(s) are needed for your case. You must provide the name and address of the witness or of the person who has the document(s).

REPRESENTATION

Representation is not required. However, if you desire, an attorney or some other adult representative may represent you at an Appeals Hearing. It is your responsibility to arrange for a representative before the hearing if you desire to be represented.

REOPENING THE HEARING

If you failed to appear at the hearing or if you have evidence which was not available at the time of the hearing, you have ten (10) days after the date of mailing of the decision to file a written, signed request to reopen the hearing. Your request should be mailed to the Appeals Bureau, 317 West Main Street, Boise, Idaho 83735-0720.

STANDARDS FOR DECISIONS

After the hearing is completed, the Appeals Examiner will review the available evidence and mail a written decision to you as soon as possible.

The Idaho Department of Labor rules provide definitions which are used to decide misconduct and voluntary leave issues. For your information, these definitions are:

IDAPA 09.01.30.275 defines **MISCONDUCT** as a willful disregard of the employer's interests, a deliberate violation of its rules, or a failure to meet its reasonable expectations. The employer is required to prove misconduct.

IDAPA 09.01.30.450 defines **GOOD CAUSE** for quitting work as being reasons which must arise out of or be connected with the work. The worker must show that he was forced to quit and that all other practical methods of solving the problem were tried before quitting. The claimant is required to prove good cause.

FRAUD

Section 72-1371(1) of the Idaho Employment Security Law provides that: **72-1371. Misrepresentation to obtain benefits or to prevent payments or to evade contribution liability – Criminal penalty.** (1) The making of a false statement when the maker knows the statement to be false, or the wilful failure to disclose a material fact in order to obtain or increase any benefit or other payment under this chapter or under an unemployment insurance law of any state or of the federal government, either for the benefit of the maker or for any other person, is hereby declared to be a felony.

IDAHO

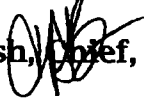
COMMERCE & LABOR

DIRK KEMPTHORNE, GOVERNOR
ROGER MADSEN, DIRECTOR

Date: November 16, 2004

TAAP #02-05

To: Area Managers; Commerce and Labor Managers

From: Cheryl A. Brush,  Chief, Workforce Systems Bureau

Subject: Fiscal Year Training Approval

Currently, case managers are required to obtain training approval from the TAA Coordinator if the cost of tuition, books and tools exceeds \$6,000 per fiscal year. After considerable research and deliberation regarding this approval limit, we determined that this standard was too low in that it did not identify those programs with extraordinary costs. It was not our intent to require approval of programs that are considered standard at public educational institutions. Therefore, effective immediately, the TAA Coordinator will be required to approve training plans (to include tuition, books and tools) that exceed \$8,000 per fiscal year.

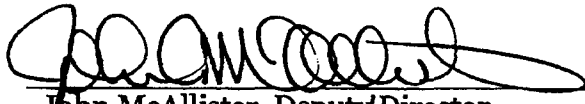
The soft cap for the entire training program, again which includes tuition, books and tools, will remain at \$16,000. Subsistence and transportation are not included in the \$16,000 soft cap. Approval from the TAA Coordinator will be required for training programs that exceed the \$16,000 soft cap.

Please direct questions in regards to the above to:

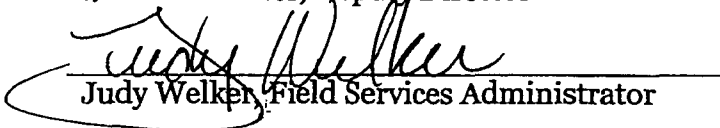
Primary: Jennifer Hemly; (208) 332-3570 extension 3480; jhemly@cl.idaho.gov

Secondary: Jeanie Irvine; (208) 332-3570 extension 3323; jirvine@cl.idaho.gov

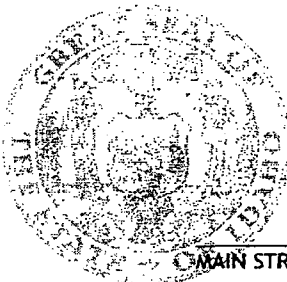
Approved:



John McAllister, Deputy Director



Judy Welker, Field Services Administrator





Student Financial Home

FAQ

Forms

Mission Statement

Online Question Form

Payments

Student Health Insurance

Tuition And Fees

Tax Forms

Other links

Academic Calendar

BroncoWeb

FERPA

Financial Aid

Housing

Student Conduct

STUDENT FINANCIAL SERVICES

Boise State University Fees

Fall 2008 and Spring 2009

Full time undergraduate (8-19 credits)*	\$ 3013
Full time graduate (8-19 credits)*	\$ 3449
Overload Fee per credit enrolled over 19	\$ 238
Per credit undergraduate (1-7 credits)	\$ 238
Per credit graduate (1-7 credits)	\$ 285
Non-resident tuition (8-19 credits)	\$ 4288 + FT Fees
Non-resident tuition (1-7 credits)	\$ 75 per credit + regular per credit fee
Western Undergraduate Exchange Fee (WUE)	\$ 1158 + FT Fees

* Full time students who waive the Student Health Insurance may subtract \$697 from the full time rate

(Summer 2008)

Undergraduate Fees per credit	\$ 222
Graduate Fees per credit	\$ 267

Summer 2009)

Undergraduate Fees per credit	\$ 233
Graduate Fees per credit	\$ 280
Non-Resident Fee per credit In addition to regular per credit fee	\$ 75

Important: in addition to the above, some courses require special fees.

EXHIBIT # 4
Page 01 of 30 Pages

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Idaho Department of Labor
317 W Main Street
Boise ID 83735-0770

TRADE ADJUSTMENT ASSISTANCE/NAFTA
REQUEST BY WORKER FOR TRAINING APPROVAL
AND ALLOWANCES WHILE IN TRAINING

Petition Number <i>61811</i>	Cost Center <i>8030</i>	Application Date <i>7/24/08</i>
Type of Training <input type="checkbox"/> Remedial <input type="checkbox"/> OJT <input checked="" type="checkbox"/> Classroom	SOC code of training <i>11-9199-99</i>	
Date of Most Recent Separation <i>7-9-07</i>	Date of Petition Certification <i>9-13-2007</i>	Eligible for Add'l T <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
Name <i>Ruth Creps</i>	Address (No, Street, City, State, Zip Code) <i>10 Daggett Rim Rd Boise, Id 83716</i>	

REQUEST BY APPLICANT

AMENDED YES date amended

I request approval for the training program below and allowances under the Trade Act.

Name or type of training program <i>Exp. MBA</i>		TRA start date <i>7-9-07</i>	Name and address of Training Facility <i>BSU 1010 University Dr. Boise, Id 83725</i>
Start date <i>9/8/2008</i>	End Date <i>5/8/2010</i>	Number weeks in training <i>89</i>	

I have applied for, or plan to apply for, one of the following other Federal programs: WIA Pell educational grant
 WIA services and Pell grant Another Federal job training benefit but not WIA or a Pell grant No other Federal prog

I request subsistence and/or transportation allowance payments for attending training at a facility located outside the commuti of my regular place of residence

I have been advised of the break in training provision and understand I will not receive TRA benefits when a break in training e 30 days.

ADVANCE PAYMENT INFORMATION

I request advance payment to enable me to attend training of one-way transportation and/or one week subsistence allowa authorize deduction from future payments until the advance is repaid. I will repay any amount not deducted. (Attach sup documents showing amounts)

APPLICANT CERTIFICATION

I give this information to support my request for entitlement to allowances while in training under the Trade Act. The info contained in this request is correct and complete to the best of my knowledge. I understand that penalties are provided for misrepresentation made to obtain allowances to which I am not entitled. I acknowledge that all funding is contingent upon the avai of Federal funds and continued Federal authorization of program activities. I agree that Idaho Commerce and Labor has the t terminate or otherwise modify this Agreement if Federal funding or authority is terminated or modified.

Signature of Applicant <i>[Signature]</i>	Date <i>7-24-08</i>
--	------------------------

<u>UI and TRA</u> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<u>Subsistence</u> -(attach worksheet) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No- does not maintain two households <u>Transportation</u> -(Beginning and end of training program) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<u>Daily Transportation</u> -(attach worksheet) <input type="checkbox"/> Yes Round trip mileage from home to training facility _____ <input checked="" type="checkbox"/> No-Lives within 25 miles of training facility
---	--	---

Total Projected Obligation: \$ <i>41,000.00</i>	FY1 Projected Obligation: \$ <i>20,500.00</i>	FY2 Projected Obligation: \$ <i>20,500.00</i>	FY3 Projected Obligation: \$
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DETERMINATION BY STATE AGENCY

Approve Deny

EXHIBIT # 5
Page _____ of _____ Pages

Reason(s) for deny:
see attached

Signature of Department Representative <i>[Signature]</i>	School Acceptance Date <i>7-1-2008</i>	Training Approval Date <i>[Signature]</i>	TAA Enrollment <i>[Signature]</i>
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APPEAL RIGHTS

This determination is final unless a request for redetermination is filed with Idaho Commerce and Labor within 14 days from date

Idaho Department of Labor
317 W Main Str
Boise ID 83735-0770

Petition Number <i>61811</i>	Cost Center <i>8030</i>	Application Date <i>7/24/08</i>
Type of Training <input type="checkbox"/> Remedial <input type="checkbox"/> OJT <input checked="" type="checkbox"/> Classroom	SOC code of training <i>11.9199.99</i>	
Date of Most Recent Separation <i>7-9-07</i>	Date of Petition Certification <i>9-13-2007</i>	Eligible for Add'l <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
Name <i>Ruth Creps</i>	Address (No, Street, City, State, Zip Code) <i>10 Daggett Rim Rd Boise, Id 83716</i>	Social Security Nu [REDACTED]

**TRADE ADJUSTMENT ASSISTANCE/NAFTA
REQUEST BY WORKER FOR TRAINING APPROVAL
AND ALLOWANCES WHILE IN TRAINING**

REQUEST BY APPLICANT

AMENDED YES date amended

I request approval for the training program below and allowances under the Trade Act.

Name or type of training program <i>Ex. MBA</i>	TRA start date <i>7-9-07</i>	Name and address of Training Facility <i>BSU 1610 University St. Boise, Id 83725</i>
Start date <i>9/5/2008</i>	End Date <i>5/8/2010</i>	Number weeks in training <i>89</i>

I have applied for, or plan to apply for, one of the following other Federal programs: WIA Pell educational grant
 WIA services and Pell grant Another Federal job training benefit but not WIA or a Pell grant No other Federal pro

I request subsistence and/or transportation allowance payments for attending training at a facility located outside the commut of my regular place of residence

I have been advised of the break in training provision and understand I will not receive TRA benefits when a break in training 30 days.

ADVANCE PAYMENT INFORMATION

I request advance payment to enable me to attend training of one-way transportation and/or one week subsistence allow authorize deduction from future payments until the advance is repaid. I will repay any amount not deducted. (Attach su documents showing amounts)

APPLICANT CERTIFICATION

I give this information to support my request for entitlement to allowances while in training under the Trade Act. The info contained in this request is correct and complete to the best of my knowledge. I understand that penalties are provided for misrepresentation made to obtain allowances to which I am not entitled. I acknowledge that all funding is contingent upon the ave of Federal funds and continued Federal authorization of program activities. I agree that Idaho Commerce and Labor has the terminate or otherwise modify this Agreement if Federal funding or authority is terminated or modified.

Signature of Applicant <i>[Signature]</i>	Date <i>7-24-08</i>
--	------------------------

UI and TRA <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Subsistence -(attach worksheet) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No- does not maintain two households Transportation -(Beginning and end of training program) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Daily Transportation -(attach worksheet) <input type="checkbox"/> Yes Round trip mileage from home to training facility _____ <input checked="" type="checkbox"/> No-Lives within 25 miles of training facility
---	--	---

Total Projected Obligation: \$ <i>41,000.00</i>	FY1 Projected Obligation: \$ <i>20,500.00</i>	FY2 Projected Obligation: \$ <i>20,500.00</i>	FY3 Projected Obligation: \$ _____
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DETERMINATION BY STATE AGENCY

Approve Deny

Reason(s) for deny:

EXHIBIT # *5-A*
Page _____ of _____ Pages

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Signature of Department Representative <i>[Signature]</i>	School Acceptance Date <i>7-1-2008</i>	Training Approval Date <i>8-8-2008</i>	TAA Enrollment <i>8-8-08</i>
--	---	---	---------------------------------

APPEAL RIGHTS

This determination is final unless a request for redetermination is filed with Idaho Commerce and Labor within 14 days from date

Idaho Department of L
317 W Main Street
Boise ID 83735-0770

**Trade Adjustment Assistance
Request by Worker for Training
Approval and Allowances**

Petition Number		Center	Application Date
Type of Training <input type="checkbox"/> Remedial <input type="checkbox"/> OJT <input type="checkbox"/> Classroom		SOC code of training	
Date of Most Recent Separation	Date of Petition Certification	Eligible for Add'l TRA? <input type="checkbox"/> YES <input type="checkbox"/> NO	
Name		Address (No, Street, City, State Zip Code)	Social Security Number

REQUEST BY APPLICANT

I request approval for the training program below and allowances under the Trade Act.

Name or type of training program		TRA start date	Name and address of Training Facility
Start date	End Date	Number weeks in training	

I have applied for, or plan to apply for, one of the following other Federal programs: WIA Pell educational grant
 WIA services and Pell grant Another Federal job training benefit but not WIA or a Pell grant No other Federal programs

I request subsistence and/or transportation allowance payments for attending training at a facility located outside the commuting area of my regular place of residence

I have been advised of the break in training provision and understand I will not receive TRA benefits when a break in training exceeds 30 days.

ADVANCE PAYMENT INFORMATION

I request advance payment to enable me to attend training of one-way transportation and/or one week subsistence allowance. I authorize deduction from future payments until the advance is repaid. I will repay any amount not deducted. (Attach supporting documents showing amounts)

APPLICANT CERTIFICATION

I give this information to support my request for entitlement to allowances while in training under the Trade Act. The information contained in this request is correct and complete to the best of my knowledge. I understand that penalties are provided for willful misrepresentation made to obtain allowances to which I am not entitled. I acknowledge that all funding is contingent upon the availability of Federal funds and continued Federal authorization of program activities. I agree that Idaho Department of Labor has the right to terminate or otherwise modify this Agreement if Federal funding or authority is terminated or modified.

Signature of Applicant	Date
------------------------	------

UI and TRA <input type="checkbox"/> Yes <input type="checkbox"/> No	Subsistence <input type="checkbox"/> Yes One-way mileage: ____ <input type="checkbox"/> No- does not maintain two households	Transportation <input type="checkbox"/> Yes Round trip mileage from home to training facility: ____ Daily Rate (not to exceed 50% of federal per diem): ____ <input type="checkbox"/> No- lives within 25 miles of training facility
--	--	---

DETERMINATION BY STATE AGENCY

Approve Deny

Reason(s) for deny:

Signature of Department Representative	School Acceptance Date	Training Approval Date	TAA Enrollment Date
--	------------------------	------------------------	---------------------

APPEAL RIGHTS

This determination is final unless a request for redetermination is filed with Idaho Department of Labor within 14 days from date of personal delivery or from date of mailing. Request for redetermination may be filed through the claims taking office in person or by mail.

IDAHO

DEPARTMENT OF LABOR

C.L. "BUTCH" OTTER, GOVERNOR
ROGER B. MADSEN, DIRECTOR

August, 7 2008

Ruth Creps
10 Daggett Rim Rd.
Boise, ID 83716

460-57-5752

Dear Mrs. Creps

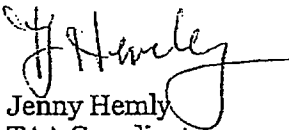
Thank you for your Trade Act benefits application. While you are entitled to request training through Trade, certain criteria must be met in order for training to be approved. Unfortunately, TAA cannot approve your request for training to complete the Executive MBA program at Boise State University (BSU). The reason TAA cannot approve this request is listed below:

Per TAA Federal Regulations, CFR 617.22 (6) (iii) (b) Allowable amounts for training. In approving a worker's application for training, the conditions for approval in paragraph (a) of this section must be found to be satisfied, including assurance that the training is suitable for the worker, is at the lowest reasonable cost, and will enable the worker to obtain employment within a reasonable period of time. An application for training shall be denied if it is for training in an occupational area which requires an extraordinarily high skill level and for which the total costs of the training are substantially higher than the costs of other training which is suitable for the worker.

According to the information provided, the Executive MBA program at BSU costs \$41,000, while the traditional MBA program at BSU costs approximately \$14,000. A BSU representative confirmed that the end result of each program is the same. Therefore, the Executive MBA program cannot be approved due to the high cost.

We encourage you to work with your case manager, Ruby Rangel, in order to select the training that best meets your needs and program requirements.

Best Regards,



Jenny Hemly
TAA Coordinator

cc: Ruby Rangel
Daniel Holmes
File

PROTEST RIGHTS

This letter may be considered to be a determination. If you disagree with this determination, you have FOURTEEN (14) DAYS from the date of mailing to file a protest. A protest must be in writing and must be signed. The protest can be filed in person, mailed, or faxed to any local Department of Labor Job Service Office. If the protest is mailed, it must be postmarked no later than the last day to protest. If no protest is filed, this determination will become final and cannot be changed.

8/19/08

Ruby,

Please submit my appeal for TAA/TRA benefits. I believe I meet the requirements and would like the opportunity to discuss the merits of allowing me to attend BSU.

Thanks
Ruth Creps
(208) 890-1666

RECEIVED
AUG 25 2008
APPEALS

RECEIVED
AUG 20 2008
BOISE LOCAL OFFICE

EXHIBIT # 7
Page of Pages

basic elements or activities common to all approaches. These include:

- (1) Job search workshop. A short (1-3 days) seminar designed to provide participants with knowledge on how to find jobs, including labor market information, applicant resume writing, interviewing techniques, and finding job openings.
- (2) Job finding club. Encompasses all elements of the Job Search Workshop plus a period (1-2 weeks) of structured, supervised application where participants actually seek employment.
- (i) Job search allowances. The individual, if eligible, shall be provided job search allowances under Subpart D of this Part 617 to defray the cost of seeking employment outside of the commuting area.
- (j) Relocation allowances. The individual, if eligible, shall be provided relocation allowances under Subpart E of this Part 617 to defray the cost of moving to a new job outside of the commuting area.

§ 617.22 Approval of training.

(a) Conditions for approval. Training shall be approved for an adversely affected worker if the State agency determines that:

- (1) There is no suitable employment (which may include technical and professional employment) available for an adversely affected worker.
- (i) This means that for the worker for whom approval of training is being considered under this section, no suitable employment is available at that time for that worker, either in the commuting area, as defined in § 617.3(k), or outside the commuting area in an area in which

the worker desires to relocate with the assistance of a relocation allowance under subpart E of this part, and there is no reasonable prospect of such suitable employment becoming available for the worker in the foreseeable future. For the purposes of paragraph (a)(1) of this section only, the term "suitable employment" means, with respect to a worker, work of a substantially equal or higher skill level than the worker's past adversely affected employment, and wages for such work at not less than 80 percent of the worker's average weekly wage.

- (2) The worker would benefit from appropriate training. (i) This means that there is a direct relationship between the needs of the worker for skills training or remedial education and what would be provided by the training program under consideration for the worker, and that the worker has the mental and physical capabilities to undertake, make satisfactory progress in, and complete the training. This includes the further criterion that the individual will be job ready on completion of the training program.

- (3) There is a reasonable expectation of employment following completion of such training. (i) This means that, for that worker, given the job market conditions expected to exist at the time of the completion of the training program, there is, fairly and objectively considered, a reasonable expectation that the worker will find a job, using the skills and education acquired while in training, after completion of the training. Any determination under this criterion must take into account that "a reasonable expectation of employment" does not require that employment opportunities for the worker be available, or offered, immediately upon the completion of the approved training. This emphasizes, rather than negates, the point that there must be a fair and objective projection of job market conditions expected to exist at the time of completion of the training.

(4) Training approved by the Secretary is reasonably available to the worker from either governmental agencies or private sources (which may include area vocational education schools, as defined in section 195(2) of the Vocational Education Act of 1963, and employers). (i) This means that training is reasonably accessible to the worker within the worker's commuting area at any governmental or private training (or education) provider, particularly including on-the-job training with an employer, and it means training that is suitable for the worker and meets the other criteria in paragraph (a) of this section. It also means that emphasis must be given to finding accessible training for the worker, although not precluding training outside the commuting area if none is available at the time within the worker's commuting area. Whether the training is within or outside the commuting area, the training must be available at a reasonable cost as prescribed in paragraph (a)(6) of this section.

(ii) In determining whether or not training is reasonably available, first consideration shall be given to training opportunities available within the worker's normal commuting area. Training at facilities outside the worker's normal commuting area should be approved only if such training is not available in the area or the training to be provided outside the normal commuting area will involve less charges to TAA funds.

(5) The worker is qualified to undertake and complete such training. (i) This emphasizes the worker's personal qualifications to undertake and complete approved training. Evaluation of the worker's personal qualifications must include the worker's physical and mental capabilities, educational background, work experience and financial resources, as adequate to undertake and complete the specific training program being considered.

(ii) Evaluation of the worker's financial ability shall include an analysis of the worker's remaining weeks of UI and TRA payments in relation to the duration of the training program. If the worker's UI and TRA payments will be exhausted before the end of the training program, it shall be ascertained whether personal or family resources will be available to the worker to complete the training. It must be noted on the worker's record that financial resources were discussed with the worker before the training was approved.

(iii) When adequate financial resources will not be available to the worker to complete a training program which exceeds the duration of UI and TRA payments, the training shall not be approved and consideration shall be given to other training opportunities available to the worker.

(6) Such training is suitable for the worker and available at a reasonable cost. (i) Such training means the training being considered for the worker. Suitable for the worker means that paragraph (a)(5) of this section is met and that the training is appropriate for the worker given the worker's capabilities, background and experience.

(ii) Available at a reasonable cost means that training may not be approved at one provider when, all costs being considered, training substantially similar in quality, content and results can be obtained from another provider at a lower total cost within a similar time frame. It also means that training may not be approved when the costs of the training are unreasonably high in comparison with the average costs of training other workers in similar occupations at other providers. This criterion also requires taking into consideration the funding of training costs from sources other than TAA funds, and the least cost to TAA funding of providing suitable training opportunities to the worker. Greater emphasis will need to be

given to these elements in determining the reasonable costs of training, particularly in view of the requirements in § 617.11(a) (2) and (3) that TRA claimants be enrolled in and participate in training.

(iii) For the purpose of determining reasonable costs of training, the following elements shall be considered:

(A) Costs of a training program shall include tuition and related expenses (books, tools, and academic fees), travel or transportation expenses, and subsistence expenses;

(B) In determining whether the costs of a particular training program are reasonable, first consideration must be given to the lowest cost training which is available within the commuting area. When training, substantially similar in quality, content and results, is offered at more than one training provider, the lowest cost training shall be approved; and

(C) Training at facilities outside the worker's normal commuting area that involves transportation or subsistence costs which add substantially to the total costs shall not be approved if other appropriate training is available.

(b) Allowable amounts for training. In approving a worker's application for training, the conditions for approval in paragraph (a) of this section must be found to be satisfied, including assurance that the training is suitable for the worker, is at the lowest reasonable cost, and will enable the worker to obtain employment within a reasonable period of time. An application for training shall be denied if it is for training in an occupational area which requires an extraordinarily high skill level and for which the total costs of the training are substantially higher than the costs of other training which is suitable for the worker.

(c) Previous approval of training under State law. Training previously approved for a worker under State law or other authority is not training approved under paragraph (a) of this section. Any such training may be approved under paragraph (a) of this section, if all of the requirements and limitations of paragraph (a) of this section and other provisions of Subpart C of this part are met, but such approval shall not be retroactive for any of the purposes of this Part 617, including payment of the costs of the training and payment of TRA to the worker participating in the training. However, in the case of a redetermination or decision reversing a determination denying approval of training, for the purposes of this Part 617 such redetermination or decision shall be given effect retroactive to the issuance of the determination that was reversed by such redetermination or decision; but no costs of training may be paid unless such costs actually were incurred for training in which the individual participated, and no additional TRA may be paid with respect to any week the individual was not actually participating in the training.

(d) Applications. Applications for, selection for, approval of, or referral to training shall be filed in accordance with this Subpart C and on forms which shall be furnished to individuals by the State agency.

(e) Determinations. Selection for, approval of, or referral of an individual to training under this Subpart C, or a decision with respect to any specific training or non-selection, non-approval, or non-referral for any reason shall be a determination to which §§ 617.50 and 617.51 apply.

(f) Length of training and hours of attendance. The State agency shall determine the appropriateness of the length of training and the hours of attendance as follows:

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

RUTH A. CREPS,)
SSN: [REDACTED])
)
Employer,)
vs.)
)
IDAHO DEPARTMENT OF LABOR.)
)
)
)
)

IDOL #8091-T-2008

NOTICE OF
FILING OF APPEAL
FILED

OCT 10 2008

INDUSTRIAL COMMISSION

PLEASE TAKE NOTICE: The Industrial Commission has received an appeal from a decision of an Appeals Examiner of Idaho Department of Labor. A copy of the appeal is enclosed. Documents that are already part of the record or file will not be copied.

Further action will be taken by the Industrial Commission in accordance with its Rules of Appellate Practice and Procedure, a copy of which is enclosed

PLEASE READ ALL THE RULES CAREFULLY

The Commission will make its decision in this appeal based on the record of the proceedings before the Appeals Examiner of the Idaho Department of Labor. To request a briefing schedule or hearing, refer to Rule IV(A) of the Rules of Appellate Practice and Procedure.

EMPLOYERS WHO ARE INCORPORATED: Please refer to Rule VIII before making any request for a hearing or briefing schedule.

INDUSTRIAL COMMISSION
POST OFFICE BOX 83720
BOISE IDAHO 83720-0041
(208) 334-6024

CERTIFICATE OF SERVICE


I hereby certify that on the 10th day of October, 2008, a true and correct copy of the **Notice of Filing of Appeal and Compact Disc.** was served by regular United States mail upon the following:

RUTH A CREPS
1212 N 5TH
BOISE ID 83706

ATTN: JENNIFER HEMLY
TRADE ACT – TAA COORDINATOR
WORKFORCE SYSTEMS
IDAHO DEPARTMENT OF LABOR
317 W MAIN STREET
BOISE ID 83735-0790

DEPUTY ATTORNEY GENERAL
IDAHO DEPARTMENT OF LABOR
STATE HOUSE MAIL
317 W MAIN STREET
BOISE ID 83735

dr


Assistant Commission Secretary

LAWRENCE G. WUSDEN
ATTORNEY GENERAL

CRAIG G. BLEDSOE - ISB# 3431
KATHERINE TAKASUGI - ISB# 5208
TRACEY K. ROLFSEN - ISB# 4050
CHERYL GEORGE - ISB# 4213
Deputy Attorneys General
Idaho Department of Labor
317 W. Main Street
Boise, Idaho 83735
Telephone: (208) 332-3570 ext. 3184

FILED
OCT 10 2008
INDUSTRIAL COMMISSION


BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

RUTH A. CREPS,)	
)	
Claimant,)	
	)	IDOL NO. 8091-2008
vs.)	
)	
STATE OF IDAHO,	)	<u>NOTICE OF APPEARANCE</u>
DEPARTMENT LABOR.)	
_____)	

TO THE ABOVE-NAMED PARTIES:

Please be advised that the undersigned Deputy Attorney General representing the Idaho Department of Labor hereby enters the appearance of said attorneys as the attorneys of record for the State of Idaho, Department of Labor, in the above-entitled proceeding. By statute, the Department of Labor is a party to all unemployment insurance appeals in Idaho.

DATED this 9th day of October, 2008.



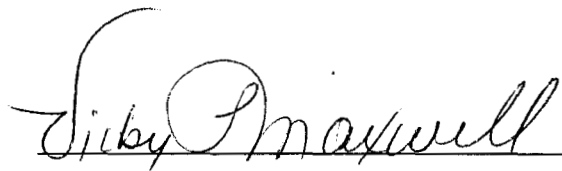
Katherine Takasugi
Deputy Attorney General
Attorney for the State of Idaho,
Department of Labor

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a copy of the foregoing NOTICE OF APPEARANCE, was mailed, postage prepaid, this 9th day of October, 2008, to:

RUTH A CREPS
1212 N 5TH
BOISE ID 83706

JENNIFER HEMLY
TRADE ACT TAA COORDINATOR
WORKFORCE SYSTEMS
IDAHO DEPARTMENT OF LABOR
317 W MAIN ST
BOISE ID 83735-0790

A handwritten signature in cursive script that reads "Sibby Maxwell". The signature is written in black ink and is positioned above a horizontal line.

LAWRENCE G. WASDEN
ATTORNEY GENERAL

CRAIG G. BLEDSOE – ISB# 3431
KATHERINE TAKASUGI – ISB# 5208
TRACEY K. ROLFSEN – ISB #4050
CHERYL GEORGE – ISB#4213
Deputy Attorneys General
Idaho Department of Commerce & Labor
317 W. Main Street
Boise, ID 83735
Telephone: (208) 332-3570

FILED
OCT 10 2008
INDUSTRIAL COMMISSION

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

RUTH A. CREPS,)	
)	
Claimant,)	
	)	IDCL NO. 8091-2008
vs.)	
)	
STATE OF IDAHO, DEPARTMENT OF	)	IDAHO DEPARTMENT OF LABOR'S
LABOR.	)	AMENDED NOTICE OF APPEAL AND
	)	MOTION FOR TRANSCRIPT AND
	)	BRIEFING ON APPEAL
)	
)	

COMES NOW, the Idaho Department of Labor, (“Department”) by and through its counsel of record, Katherine Takasugi, Deputy Attorney General, and files this Amended Notice of Appeal and Motion for Transcript and Briefing on Appeal.

The Department amends the Notice of Appeal filed on October 6, 2008, by adding the following:

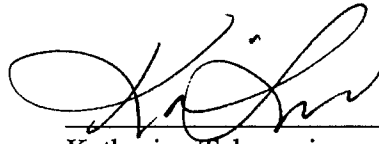
- The Hearing Examiner misapplied the standard for what constitutes “reasonable costs” under 20 C.F.R. §617.22(a)(6) considering the facts and evidence presented at the hearing.
- The Hearing Examiner failed to consider the requirement for allowable amounts for training set forth in 20 C.F.R. §617.22(b).

43

- The Hearing Examiner's factual findings no. 5 is clearly erroneous considering Claimant's work background.
- The Hearing Examiner's conclusions are clearly erroneous and the decision should be reversed and the Department's initial Determination should be affirmed.

The Department respectfully moves the Industrial Commission to transcribe the hearing held on September 25, 2008, by Appeals Examiner Gregory Stevens. The Department also requests the right to file a brief on appeal of this matter.

DATED this 24 day of October, 2008.



Katherine Takasugi
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 9TH day of October 2008, I served the foregoing IDAHO DEPARTMENT OF LABOR'S AMENDED NOTICE OF APPEAL AND MOTION FOR TRANSCRIPT AND BRIEFING in the manner set forth below, to:

U.S. Mail, Postage Prepaid:

RUTH A. CREPS
1212 N. 5th
Boise, ID 83706



BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

RUTH A. CREPS,)
)
 Claimant,)
)
 vs.)
)
 IDAHO DEPARTMENT OF LABOR.)
)
 Respondent.)
 _____)

**IDOL #8091-T-2008
ORDER ESTABLISHING
BRIEFING SCHEDULE**

FILED

OCT 14 2008

INDUSTRIAL COMMISSION

Respondent, Idaho Department of Labor, appeals to the Industrial Commission a Decision issued by the Idaho Department of Labor ("IDOL" or "Department) approving Claimant's choice of training requested under the Trade Adjustment Assistance program. IDOL asks that the Commission obtain a paper transcript of the Appeals Examiner's hearing and seeks an opportunity to argue its case through a brief. As provided for under Rule 4 (A) of the Rules of Appellate Practice and Procedure under the Idaho Employment Security Law, effective, as amended, February 1, 2001, we grant the request.

ORDER ESTABLISHING BRIEFING SCHEDULE

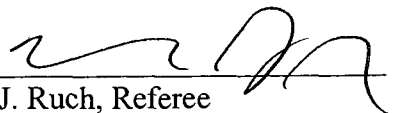
The Commission establishes the following briefing schedule:

IDOL's brief will be due ten (10) days from the date the Commission serves on the parties the paper transcript of the hearing record.

Claimant may reply within seven (7) days of the receipt of the Department's brief, if she so chooses.

DATED this 14th day of October 2008.

INDUSTRIAL COMMISSION


Cheri J. Ruch, Referee

ATTEST

The seal of the Industrial Commission, State of Idaho, is circular with a dotted border. Inside the border, the words "INDUSTRIAL COMMISSION" are written in a circle at the top, and "STATE OF IDAHO" is written at the bottom. In the center, the name "Darlene Reed" is written in a cursive script, with a horizontal line underneath it. The text "Assistant Commission Secretary" is printed below the signature.
Assistant Commission Secretary

CERTIFICATE OF SERVICE

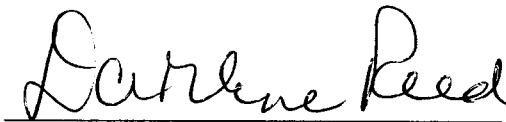
I hereby certify that on the 14th day of October 2008, a true and correct copy of **Order Establishing Briefing Schedule** was served by regular United States mail upon each of the following:

RUTH A CREPS
1212 N 5TH
BOISE ID 83706

ATTN: JENNIFER HEMLY
TRADE ACT – TAA COORDINATOR
WORKFORCE SYSTEMS
IDAHO DEPARTMENT OF LABOR
317 W MAIN STREET
BOISE ID 83735-0790

ATTN: KATHERINE TAKASUGI
DEPUTY ATTORNEY GENERAL
IDAHO DEPARTMENT OF COMMERCE AND LABOR
317 W MAIN ST
BOISE ID 83735

dr

A cursive signature of Darlene Reed, written in black ink, is positioned above a horizontal line.

RUTH A. CREPS, PRO SE
1212 N. 5th Street
Boise, Idaho 83702
(208) 890-1666

709 001 16 P 09
RECEIVED
INDUSTRIAL COMMISSION

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

RUTH A. CREPS,)
)
 Claimant/Respondent,)
)
 vs.)
)
 STATE OF IDAHO,)
 DEPARTMENT LABOR.)
 Appellant.)
)
)
)
)
)

IDOL NO 8091-2008

NOTICE OF APPEARANCE

TO THE ABOVE NAMED PARTIES:

Please be advised that pursuant to R.A.P.P. 8(A), the undersigned Ruth A. Creps enters a Pro Se appearance on her own behalf in the above-entitled proceeding.

DATED this 16th day of October, 2008.



Ruth A. Creps, Pro Se

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing NOTICE OF APPEARANCE,
was filed with the Industrial Commission of the State of Idaho and was hand delivered,
this 16th day of October, 2008, to:

LAWRENCE G. WASDEN
ATTORNEY GENERAL

KATHERINE TAKASUGI
DEPUTY ATTORNEY GENERAL
317 W. MAIN ST.
BOISE, IDAHO 83735



Ruth A. Creps, Pro Se

RUTH A. CREPS, PRO SE
1212 N. 5th Street
Boise, Idaho 83702
(208) 890-1666

2008 OCT 16 10 14 AM
RECEIVED
INDUSTRIAL COMMISSION

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

RUTH A. CREPS,)	
)	
Claimant/Respondent,)	
)	
vs.	)	IDOL NO 8091-2008
)	
)	
STATE OF IDAHO,	)	REQUEST FOR BRIEFING AND CONDITIONAL
DEPARTMENT LABOR.	)	REQUEST FOR HEARING
)	
)	
Appellant.)	
)	
)	

TO THE ABOVE NAMED PARTIES:

Claimant, Ruth A. Creps hereby requests briefing in this matter and further, for the reasons more fully set forth herein, conditionally requests a hearing to present additional evidence to address issues raised by the Appellant for the first time on appeal.

Claimant contends that the information and evidence considered by the Appeals Examiner as reflected in the transcript of the hearing held on September 25, 2008 support the Appeals Examiner Decision dated September 29, 2008 approving Claimant's request for training pursuant to the Federal Trade Adjustment Assistance Program at Boise State University's Executive M.B.A. program. As stipulated by the representative/witness for the Appellant (Tr., Jennifer Hemley), and as framed by the REQUEST FOR BRIEFING AND CONDITIONAL REQUEST FOR HEARING - 1

Appeals Examiner, the sole issue presented was "whether the claimant's request for training meets the criteria provided for in the Trade Act Regulations 20 CFR 617.22(a)(6)(iii)(B)" (Decision of Appeals Examiner, p.2). As the transcript and Decision make clear, the Department's sole contention was that the training provided by the M.B.A. program and the Executive M.B.A. programs at Boise State University are "substantially similar in quality, content and results" as the phrase is used in 20 CFR 617.22(a)(6)(iii)(B). The evidence provided by the Claimant and as found by the Appeals Examiner, established that the two programs are not substantially similar in quality, content and results. There was no dispute that the Claimant is qualified by her experience, training, and education to participate in the Executive M.B.A. program. In fact, Claimant has been admitted to, and is currently participating in, the Executive M.B.A. program under considerable hardship due to the expenditure of her personal funds.

In the event that the Commission allows the Department to raise the new issues identified in the original and amended notices of appeal, the Claimant respectfully requests the opportunity to rebut the new issues at a hearing by presenting evidence and testimony from the following individuals:

Patrick Coyne
Boise State University
Current Program Manger of Executive Education and Graduate Boise
State University's Master of Business Administration Program (as a TAA
program participant)
(208) 426-3008

Mr. Coyne is expected to provide testimony and evidence to rebut misrepresentations made by Jennifer Hemley at the Appeals Hearing concerning hearsay statements she attributed to Mr. Coyne concerning the alleged similarity in the quality, content and result of the two programs. In addition, as a graduate of the Boise State University M.B.A. program

and current Program Manager of the Boise State University Executive M.B.A. program, Mr. Coyne is uniquely suited to provide testimony clarifying the differences in the quality, content, and result of the two M.B.A. programs offered by Boise State University.

Kirk Smith
Boise State University
Associate Dean for Business Graduate Studies and Executive Education
(208) 426-3180

Mr. Smith provides oversight for both the M.B.A. program and Executive M.B.A. program at Boise State University. Mr. Smith is expected to provide testimony and evidence concerning the differences between the two programs and the results graduates of each can expect in the job market.

Cheryl J. Maile
Boise State University
Director of Executive Education
(208) 426-4034

Ms. Maile, who testified at the hearing before the Appeals Examiner, will provide evidence and testimony on the new issues raised for the first time on Appeal by the Department to the Commission. Had the Department properly raised the issues below, the Claimant would have received due process notice of the reasons for the Department's denial of her T.A.A. training request. Had the Department provided the Claimant with adequate notice, this testimony would already be in the record. The Claimant should not be prevented from presenting evidence to rebut new issues raised for the first time on appeal.

WHEREFORE, Claimant respectfully requests briefing, and in the unlikely event the Commission considers the new issues raised by the Department for the first time on appeal, Claimant requests a hearing to rebut the Department's new claims.

DATED this 16th day of October, 2008.



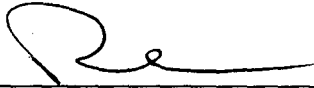
Ruth A. Creps, Pro Se

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing REQUEST FOR BRIEFING AND CONDITIONAL REQUEST FOR HEARING, was filed with the Industrial Commission of the State of Idaho and was hand delivered, this 16th day of October, 2008, to:

LAWRENCE G. WASDEN
ATTORNEY GENERAL

KATHERINE TAKASUGI
DEPUTY ATTORNEY GENERAL
317 W. MAIN ST.
BOISE, IDAHO 83735



Ruth A. Creps, Pro Se

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

FILED

OCT 20 2008

INDUSTRIAL COMMISSION

RUTH A. CREPS,)
)
 Claimant,)
)
 and)
)
 IDAHO DEPARTMENT OF LABOR,)
)
 Respondent.)
 _____)

IDOL #8091-T-2008

ORDER DENYING REQUEST FOR A NEW HEARING

Respondent, Idaho Department of Labor, appeals to the Industrial Commission a Decision issued by the Idaho Department of Labor (“IDOL” or “Department”). In that Decision, the Appeals Examiner approved Claimant’s choice of training requested under the Trade Adjustment Assistance program. IDOL sought an opportunity to file a brief and the Commission approved that request in an Order issued on October 14, 2008. Subsequently, Claimant filed a separate request to argue her case in brief and for a new hearing, should the Commission accept new evidence as part of the Department’s brief. (Claimant’s request, filed October 16, 2008).


Pursuant to Idaho Code § 72-1368(7), the Commission may, in its sole discretion, “conduct a hearing to receive additional evidence or may remand the matter back to the appeals examiner for an additional hearing and decision.” In this case, Claimant seeks a new hearing to provide additional evidence in support of his case. Rule 6 (B) 5 of the Rules of Appellate Practice and Procedure Under the Idaho Employment Security Law, effective as amended, February 1, 2001, provides that a party requesting a hearing to offer additional evidence shall submit “the reasons why the proposed evidence was not presented before the appeals examiner.”

Whether a party seeks to present additional evidence or make an oral argument on the basis of the record as it stands, that party must present some justification for that request. Unemployment insurance appeals are adjudicated under the principals and procedures of administrative law. Hearings at this level of review are not a matter of right, as in some other forums.


There is no indication or allegation of improprieties that precluded Claimant from a full and fair opportunity to present evidence supporting her contentions about her choice of training during the Appeals Examiner's hearing. The Commission takes the position that conducting a new hearing at this level of review is an extraordinary measure and should be reserved for those cases when due process or other interests or justice demand no less. We find no such circumstances here. Therefore, we find no reason to conduct an additional hearing in this case to allow either party to present additional evidence. Accordingly, Claimant's request for a new hearing is DENIED. Claimant may file a brief in response to the brief the Department files, pursuant to the Commission's Order Establishing Briefing Schedule issued on October 14, 2008.


DATED this 20th day of October 2008.

INDUSTRIAL COMMISSION


Cheri J. Ruch, Referee

ATTEST:


Assistant Commission Secretary



The seal is circular with a dotted border. The text 'INDUSTRIAL COMMISSION' is at the top, 'STATE OF IDAHO' is at the bottom, and 'SEAL' is in the center. There are two stars on either side of the word 'SEAL'.

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of October 2008, a true and correct copy of **Order Denying Request for a New Hearing** was served by regular United States mail upon each of the following:

RUTH A CREPS
1212 NORTH 5TH STREET
BOISE ID 83702

ATTN KATHERINE TAKASUGI
DEPUTY ATTORNEY GENERAL
IDAHO DEPARTMENT OF LABOR
STATE HOUSE MAIL
317 W MAIN STREET
BOISE ID 83735

cjh



LAWRENCE G. WUSDEN
ATTORNEY GENERAL

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CRAIG G. BLEDSOE - ISB# 3431
KATHERINE TAKASUGI – ISB# 5208
TRACEY K. ROLFSEN – ISB# 4050
CHERYL GEORGE – ISB# 4213
Deputy Attorneys General
Idaho Department of Labor
317 W. Main Street
Boise, Idaho 83735
Telephone: (208) 332-3570 ext. 3184

RECEIVED
INDUSTRIAL COMMISSION

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

RUTH A. CREPS,)	
)	
Claimant/Respondent,)	
	)	IDOL NO. 8091-2008
vs.)	
)	
STATE OF IDAHO,	)	APPELLANT IDAHO DEPARTMENT
DEPARTMENT LABOR,	)	OF LABOR’S BRIEF
)	
)	
Appellant.)	
)	
)	
)	
)	
)	

INTRODUCTION

The Appellant Idaho Department of Labor (“Department”) appeals the decision of the Appeals Examiner, which reversed the Department’s Determination and approved Respondent Ruth A. Creps’ request for training under the Trade Adjustment Assistance Program. The central issue presented in this appeal is whether the cost of the requested training is allowable and reasonable under the federal regulations.

On July 24, 2008, Respondent applied for Trade Adjustment Assistance with the Department. She specifically requested training assistance for the Executive Masters in Business Administration (“Executive MBA”) program with Boise State University (“BSU”). On August 7, 2008, Jennifer Hemly, Trade Adjustment Assistance Coordinator with the Department, issued a Determination denying Respondent’s request for training. Ms. Hemly compared the requested training with BSU’s Traditional MBA program and denied the request finding that the cost of the training was too high.

On August 19, 2008, Ms. Creps filed an appeal of the Department’s Determination to the Idaho Department of Labor’s Appeals Bureau. On September 25, 2008, Appeals Examiner Gregory Stevens held a hearing in the matter. Ms. Hemly appeared for the Department and Attorney Thomas Tharp appeared for Respondent. Ms. Hemly testified on behalf of the Department and Ms. Creps and Cheryl Maille, Director of BSU’s Executive MBA program, testified at the hearing on behalf of Respondent.

On September 29, 2008, the Appeals Examiner issued his decision. The Appeals Examiner reversed the Department’s Determination finding that under the factors for reasonable costs, the Executive MBA program and the Traditional MBA program were not equal in content and quality. He also found that the MBA degrees from the two programs were not equal. He approved the claimant’s request for training services.

FINDINGS OF FACT

The Trade Act of 1974 provides for the retraining and relocation of workers displaced by foreign trade. The Department administers the Trade Adjustment Assistance program in the State of Idaho for the United States Department of Labor and Appellant is mandated to develop training plans and determine which training institutions

provide training at a reasonable cost. See 20 C.F.R. 617.20(b)(8)-(9). The Trade Adjustment Assistance program has a limit on the total amount spent in any fiscal year. 19 U.S.C. § 2296(a)(2)(A). The Department has by policy set limits on the amount it spends on individual requests for training. On November 16, 2004, the Department amended its policy for the maximum amount it spends on individual training per fiscal year from \$6,000 to \$8,000. Exhibit 3. The Department also placed a \$16,000 soft cap on the cost of an individual's entire training program. Id. These costs included the cost of tuition, books and tools. Id.

Respondent had been employed with Micron Technology as a program manager. Tr. p. 8, L. 18; p. 14, Ll. 12-15. Her employment history was pretty much technical with some supervisory experience of 10 to 15 years. Tr. p. 14, Ll. 18-22. Respondent specifically testified that she was not an executive, but that her career path was to be promoted into an executive management position. Tr. p. 14, Ll. 14-18. Micron Technology laid her off on July 9, 2007. Exhibit 5; Tr. p. 8, Ll. 23-24. At the time of her layoff Ms. Creps testified that she was making \$96,000. Tr. p. 21, Ll. 16-18. However, the Appeals Examiner found that she actually earned \$89,602 in her base period (April 2, 2006 to March 31, 2007).¹ Exhibit 9; Decision of Appeals Examiner, p. 1.

On July 9, 2008, Respondent submitted an application for training approval under the Trade Adjustment Assistance program for the Executive MBA program offered by BSU. Exhibit 5. The total projected cost of the training was \$41,000.00. Exhibit 5; Tr. p. 6, Ll. 12-21.

¹ The Appeals Examiner took office [sic] notice of the Department record Employers Data and entered it into the record as Exhibit 9.

On August 7, 2008, Jennifer Hemly, Trade Adjustment Assistance Coordinator with the Department, issued a Determination denying Respondent's request. Exhibit 6; Tr. p. 5, Ll. 21-25; p. 6, Ll. 1-2. The Determination stated the following reason for the denial:

Per TAA Federal Regulations, CFR 617.22(6)(iii)(b)² Allowable amounts for training. In approving a worker's application for training, the conditions for approval in paragraph (a) of this section must be found to be satisfied, including assurance that the training is suitable for the worker, is at the lowest reasonable cost, and will enable the worker to obtain employment within a reasonable period of time. An application for training shall be denied if it is for training in an occupational area which requires an extraordinarily high skill level and for which the total costs of the training are substantially higher than the costs of other training which is suitable for the worker.

According to the information provided, the Executive MBA program at BSU costs \$41,000, while the traditional MBA program at BSU costs approximately \$14,000. A BSU representative confirmed that the end result of each program is the same. Therefore, the Executive MBA program cannot be approved due to the high cost.

At the appeal hearing, Ms. Hemly testified that Respondent's request for Trade Adjustment Assistance training was not suitable and that the training request did not meet the requirements of the federal regulation. Tr. p. 6, Ll. 3-7. Ms. Hemly conducted a comparison between BSU's Traditional MBA program and the Executive MBA program. She found that both programs were two year programs and ascertained the costs of the programs, the Traditional MBA program cost approximately \$14,000 whereas the Executive MBA program cost \$41,000. Exhibit 4 and Exhibit 5; Tr. p. 6, Ll. 10-18, Ll. 21-25. She also talked to BSU's Executive MBA program manager, Patrick Coyne, and reviewed the Executive MBA program brochure in making her decision. Tr. p. 7, Ll. 1-15. Ms. Hemly further testified that although the process in getting the MBA was

² The citation to the federal regulation is in error. The correct citation is 617.22(b). The error is harmless, since the Department quoted the regulation verbatim in its Determination.

different the outcome of the two programs was the same degree, a MBA. Tr. p. 7, Ll. 16-23; p. 8, Ll. 1-9; p. 12, Ll. 9-17. The Executive MBA program has very integrated courses in contrast to courses limited to a single discipline. Tr. p. 26, Ll. 20-25; p. 27, Ll. 1-20.

ARGUMENT

1. Standard of Appeal.

The Industrial Commission conducts a de novo review of an appeal of a Trade Adjustment Assistance program case. Idaho Code § 72-1368(7).

2. The Appeals Examiner Misapplied the Rule on Reasonable Cost.

19 U.S.C. §§2101 et seq. sets out the Trade Act of 1974. The Act offers assistance to workers who are displaced by foreign trade and provides funds to retrain or relocate workers. 19 U.S.C. §2296(a)(1) sets out six requirements for approval of training, which are: 1) there is no suitable employment (which may include technical and professional employment) available for an adversely affected worker, 2) the worker would benefit from appropriate training, 3) there is reasonable expectation of employment following completion of such training, 4) training approved by the Secretary is reasonably available to the worker from either government agencies or private sources (which may include area career and technical education schools, as defined in section 2302 of this title, and employers), 5) the worker is qualified to undertake and complete such training, and 6) such training is suitable for the worker and available at reasonable cost.

The United States Department of Labor has promulgated regulations which set out the conditions for approval of training in 20 C.F.R. §617.22. The United States

Department of Labor's interpretation of the Act and its own regulation are entitled to great weight. Ford v. Commonwealth of Pennsylvania, Unemployment Compensation Board of Review, 48 Pa. Cmwlth. 580, 583, 409 A.2d 1209, 1211 (Pa. Commw. Ct. 1980). Uniformity of administration by the several states of federal programs requires that particular deference be paid to the interpretation of the responsible federal agencies. Id.

The federal regulations governing the Trade Adjustment Assistance program requires that there must be assurance that training is suitable for the worker, is at the lowest reasonable cost and will enable the worker to obtain employment within a reasonable period of time. The program is not designed to give an applicant the best training available, but training for workers at the lowest reasonable costs which will lead to employment and result in training opportunities for the largest number of adversely affected workers. See 59 Fed. Reg. 906, 924 (1994).

Respondent's request for training should be denied because the cost of the Executive MBA program does not meet the requirements of reasonable cost under the federal regulation. The Appeals Examiner misapplied the standard for what constitutes reasonable cost under 20 C.F.R. §617.22(a)(6) considering the facts and evidence presented at the hearing. 20 C.F.R. §617.22(a)(6) states:

(6) *Such training is suitable for the worker and available at a reasonable cost.*

(i) Such training means the training being considered for the worker. Suitable for the worker means that paragraph (a)(5) of this section is met and that training is appropriate for the worker given the worker's capabilities, background and experience.

(ii) Available at reasonable cost means that training may not be approved at one provider when, all costs being considered, training substantially similar in quality, content and results can be obtained from another

provider at a lower total cost within a similar time frame. It also means that training may not be approved when the costs of the training are unreasonably high in comparison with the average costs of training other workers in similar occupations at other providers. This criterion also requires taking into consideration the funding of training costs from sources other than TAA funds, and the least cost to TAA funding of providing suitable training opportunities to the worker. Greater emphasis will need to be given to these elements in determining the reasonable costs of training, particularly in view of the requirements in §617.11(a)(2) and (3) that TRA claimants be enrolled in and participate in training.

(iii) For the purpose of determining reasonable costs of training, the following elements shall be considered:

(A) Costs of a training program shall include tuition and related expenses (books, tools, and academic fees), travel or transportation expenses, and subsistence expenses;

(B) In determining whether the costs of a particular training program are reasonable, first consideration must be given to the lowest cost training which is available within the commuting area. When training, substantially similar in quality, content and results, is offered at more than one training provider, the lowest cost training shall be approved; and

(C) Training at facilities outside the worker's normal commuting area that involves transportation or subsistence costs which add substantially to the total costs shall not be approved if other appropriate training is available.

(Underlining added)

There are no Trade Adjustment Assistance cases in Idaho to give guidance on the issues presented, however, there are other jurisdictions that have considered the issue of reasonable costs which are instructive. In Marshall v. Commissioner of Jobs and Training, 496 N.W. 2d 841 (Minn. Ct.App. 1993), the Minnesota Court of Appeals found that an applicant wanting to enhance an already existing professional degree bears a heavy burden to demonstrate that such training is reasonable and necessary. It found that the statute was not meant to allow a person with a professional degree who has reasonable job prospects or options the opportunity to acquire a second professional degree simply to enhance employability.

In Nevarre v. Unemployment Compensation Board of Review, 675 A.2d 361 (Pa. Commw. Ct. 1996), claimant was employed for 8 ½ years as a systems analyst at a salary of \$36,000 per year. He requested training allowances for a physician's assistance program costing approximately \$36,000. The request was denied based on the finding that the cost was prohibitive. The Pennsylvania Court stated the following in regards to the Trade Adjustment Assistance program:

...The Trade Act does not place any specific monetary limit on the cost of individual training programs for which applicants may obtain approval, but does include some limitation on total annual funding for TAA training. *See* 19 U.S.C. §2296(a)(2). At the same time, the act creates obligations to re-train certain adversely affected workers for suitable employment, which is defined as "work of a substantially equal or higher skill level than the worker's past adversely affected employment, and wages for such work at not less than 80 percent of the worker's average weekly wage." 19 U.S.C. § 2296(e). Under these circumstances, some competing concerns may arise when a college educated, highly skilled applicant, who formerly worked at a high paying position, seeks TAA training. On one hand, it might be unfair and fiscally unsound for that applicant to receive much higher allowances than those provided to his or her fellow adversely affected, perhaps less skilled, workers; on the other hand, it might also be unfair not to recognize what is "suitable" for an individual applicant or to allow the positive background of the applicant, who is no less adversely affected, to become a detriment. Resolving this conflict requires state agencies to balance overall, collective costs against individual training requests. We emphasize that the state agencies no doubt have discretion in this area, as long as they follow the criteria set forth in the regulations.

Nevarre, 675 A.2d at 363-364.

In Nevarre, the Pennsylvania Court reviewed the regulation on reasonable costs and allowable costs and found that they supported the proposition that the total costs themselves compared to costs of other suitable training, not only to programs in one particular area of suitable training, was a proper consideration in denying payments for training.

The Pennsylvania Court also found that training costs that are comparable to costs among providers of similar training may nonetheless be denied as excessive or prohibitive. Such a denial may be sustained after weighing 1) factors such as total costs themselves and their relationship to the average training costs and 2) the total cost of a program as compared to costs of other training that would be suitable for the particular applicant. The Court remanded the case for further findings.

In Ostapenko v. Department of Employment and Economic Development, WL 2129769 (Minn. App. 2006), the Minnesota Court of Appeals held that Trade Adjustment Assistance training costs was unreasonable when it exceeded the Department of Employment and Economic Development's limits for training. In setting the limits the Department based the cap on the number of workers who needed training.

Respondent Ms. Creps' request for training assistance should be denied because the cost of the Executive MBA program does not comply with the requirements for reasonable cost. In the instant case, the Appeals Examiner failed to consider the factors of what constitutes "available at a reasonable cost" under 20 C.F.R. §617.22(a)(6)(ii) in light of the evidence. Available at reasonable cost means that training may not be approved at one provider when, all costs being considered, training substantially similar in quality, content and results can be obtained from another provider at lowest total cost. The Appeals Examiner concluded that the Traditional MBA program and the Executive MBA program are substantially different in quality and content. He also indicated that the degrees were not equal. Evidence in the record shows that the Traditional MBA program was substantially similar in quality and the two degrees are not different. The

Appeals Examiner apparently relied on the biased testimony of the Respondent³ and the Director of the Executive MBA program⁴ in making his decision. In fact the Appeals Examiner's conclusion with respect to quality of the program is contrary to Ms. Maille's testimony. When asked whether the training offered by the Executive MBA program was substantially similar in quality, content and results offered by the Traditional MBA program, she testified that the Executive MBA was better. Tr. p. 40, L. 20. She did not testify that the Executive program was substantially better. She also admitted that the regular MBA program was in fact a very good program. Tr. p. 41, Ll. 8-9. She further testified that an individual such as Respondent could do the regular MBA program. Tr. p. 41, Ll. 12-15.

There is no competent evidence to support the Appeals Examiner's findings that the MBA degrees were not equal. Ms. Hemly testified that in her work with employers she sees job listing and their requirements and she has never seen a job listing that

³ Ms. Creps testified at the hearing that the Executive MBA program was a "qualitatively different experience" from the Traditional MBA program. Tr. p. 16, Ll. 5-8. Ms. Creps is only enrolled in the Executive MBA program and is not competent to testify about the quality and content of the Traditional MBA program. Tr. p. 15, Ll. 14-23.

Ms. Creps also testified about the class size of the Traditional MBA program, however, her earlier testimony indicates that she never found out number of students in the Traditional MBA program. Tr. p. 20, Ll. 8-17; p. 17, Ll. 7-9.

⁴ The testimony of Cheryl Maille, Program Director of the Executive MBA program should be discounted due to her bias towards the Executive MBA program. She has a direct interest to ensure that the Executive MBA program succeeds. Ms. Maille testified that the program is a self supporting program within the university and business college and that there is a big cost differential in terms of the faculty. They have to pay the faculty. Tr. p. 31, Ll. 14-24. A substantial expenditure of the program is the executive coaching. Tr. p. 31, Ll. 20-22. They provide all of the books, materials, additional software the participants use. Tr. p. 31, Ll. 24-25; p. 32, L. 1. They also have to pay for all additional speakers that come in. Tr. p. 32, Ll. 1-2. They have open residency that they lodge and feed all the executive MBAs off site for five days and evenings and they have evening sessions for the program. Tr. p. 32, Ll. 2-5.

Ms. Maille is also biased towards Respondent's case. She testified that Respondent is currently engaged in entrepreneurial ventures. Tr. p. 34, Ll. 6-13. However, Ms. Maille's testimony is directly refuted by Ms. Creps' testimony which shows that she has enrolled in the Executive MBA program to get a job comparable to what she was getting paid. She is hopeful the networking with her classmates may assist her in procuring a job. Tr. p. 21, Ll. 11-15; p. 15, Ll. 6-13.

required an Executive MBA. Tr. p. 42, Ll. 14-17. The Director of the Executive MBA program was unable to name a single Idaho employer that would prefer an Executive MBA over the Traditional MBA. Tr. p. 37, Ll. 21-25; p. 38, L. 1. Appellant refers the Industrial Commission to its argument in section 4 that shows the evidence that the Appeals Examiner apparently relied upon was flawed.

The regulation on "available at reasonable cost" also provides that training may not be approved when the costs of the training are unreasonably high in comparison with the average costs of training other workers in similar occupations at other providers. The evidence at the hearing clearly showed that the Executive MBA program cost \$41,000, which is unreasonably high in comparison with the cost of training other workers in similar occupations, the Traditional MBA program. The Traditional MBA program cost was approximately \$14,000. Exhibit 4; Tr. p. 6, Ll. 14-18.

The Appeals Examiner also misapplied the regulation on determining the reasonable costs of training set forth in 20 C.F.R. 617.22(a)(6)(iii)(B). The regulation requires that in determining whether the costs of a particular training program are reasonable, first consideration must be given to the lowest cost training which is available within the commuting area. According to the testimony presented at the hearing, the lowest cost training within Ms. Creps' commuting area was BSU's Traditional MBA program, which costs \$14,000. The program was within the commuting area from Respondent's residence located at 10 Daggett Rim Road, Boise, Idaho. Exhibit 5; Tr. p. 6, Ll. 3-25. BSU's campus is located at 1610 University Drive, Boise, Idaho. Exhibit 5.

The Appeals Examiner based his analysis of reasonable costs on the second sentence of this paragraph. One only considers the second sentence of this paragraph

when there is more than one provider that offers training that is substantially similar in quality, content and results. The regulation then requires that the lowest cost training shall be approved. Because the Traditional MBA program was the lowest cost program within the commuting area under the first part of the regulation there was no reason to apply the second sentence.

The cost of training is unreasonable because it exceeds the Appellant's ceiling on training. The Trade Act does not place any specific monetary limits on the cost of individual training programs for which applicants may obtain approval, but does place limits on the total annual funding for Trade Adjustment Assistance training. Nevarre, 675 A.2d at 363. 19 U.S.C. §2296(a)(2) provides that the total amount of payments that may be made under the entire Trade Adjustment Assistance program for any fiscal year shall not exceed \$220,000,000. In Ostapenko, supra, the Court held that application for trade adjustment assistance training costs were unreasonable when it exceeded the Department of Employment and Economic Development's limits for training.

The cost of training under the Executive MBA program was \$41,000. The Department imposed a soft cap ceiling of \$16,000 for the cost of an individual's entire training program. Exhibit 3. The cost of training under the Executive MBA program is unreasonable because it exceeds the ceiling set by the Department.

3. Appeals Examiner Failed to Consider the Regulation on Allowable Cost.

The Respondent's request for training for the Executive MBA program should be denied because it fails to meet the requirement for allowable cost under the federal regulation. The Appeals Examiner failed to consider the federal regulation on allowable

cost⁵ quoted verbatim by the Department in its Determination. 20 C.F.R. §617.22(b) the regulation on allowable cost requires the training to be suitable for the worker and is at the lowest reasonable cost. The regulation states:

(b) *Allowable amounts for training.* In approving a worker's application for training, the conditions for approval in paragraph (a) of this section must be found to be satisfied, including assurance that the training is suitable for the worker, is at the lowest reasonable cost, and will enable the worker to obtain employment within a reasonable period of time. An application for training shall be denied if it is for training in an occupational area which requires an extraordinarily high skill level and for which the total costs of the training are substantially higher than the costs of other training which is suitable for the worker.

The Respondent cannot meet the requirements of this regulation because her request for training does not satisfy the conditions for approval in 20 C.F.R. §617.22(a)(6). Furthermore, the requested training was not the lowest reasonable cost training. Tr. p. 6, Ll. 3-18. The Appellant refers the Industrial Commission to the arguments presented above with respect to reasonable costs.

The regulation further mandates that training should be denied when training is in an occupational area which requires an extraordinarily high skill level and for which the total costs of training are substantially higher than the costs of other training which is suitable for the worker. Here Respondent seeks training in the Executive MBA program, which requires an extraordinarily high skill level. Ms. Hemly testified that Executive MBA program requires approximately six years of professional experience with steady career progression and current employment in middle to upper management. It also

⁵ The Respondent in her Request for Briefing and Conditional Request for Hearing contended that Appellant has brought up new issues on appeal. This is contradicted by the record. Jennifer Hemly testified that the issue in this case was cost. Tr. p. 10, Ll. 10-15. Furthermore, 20 C.F.R. §617.22(b) was the rule cited by Appellant in its Determination letter issued to Respondent on August 7, 2008. Exhibit 6. Respondent further alleged that she was not afforded due process on these new issues. Respondent has been afforded due process. The Department gave Ms. Creps notice of the issues in its Determination and she was given an opportunity to rebut the exhibits and evidence presented by the Appellant at the hearing conducted on September 25, 2008.

required professional growth potential. Tr. p. 7, Ll. 23-25; p. 8, Ll. 1-6; p. 9, Ll. 5-25; p. 10, Ll. 1-2. Ms. Maille testified that the Executive MBA program has a consortium of local companies who have chosen to partner with BSU and are sending people from their top leadership tier to the program. Tr. p. 38, Ll. 1-24. She also testified that most of the individuals currently enrolled in the Executive MBA program are currently employed by either the consortium companies or other employers. Tr. p. 38, L. 25, p. 39, Ll. 1-17. The Executive MBA program is an extraordinary high skill level program considering Respondent's background. She was laid off from Micron, and is not currently employed, she has had supervisory experience for 10-15 years and has never been in an executive position, but aspired to be promoted into such a position. Tr. p. 14, Ll. 14-18. Evidence in this case also showed that the cost for the Executive MBA program was substantially higher than the cost of other training which was suitable for the Ms. Creps. Tr. p. 6, Ll. 3-25. Ms. Hemly found the Traditional MBA program was suitable for the Respondent and testified that the Department had no issue with approving the Traditional MBA program for Respondent. Tr. p. 42, Ll. 17-18. The suitability of the Traditional MBA for a professional was also corroborated by the Director of the Executive MBA program. Ms. Maille testified that she could not say that the Traditional MBA program would not be good for a candidate with a professional work history. Tr. p. 35, Ll. 11-23.

The Trade Assistance Act is not meant to allow a professional such as Ms. Creps to acquire a second degree simply to enhance employability. See Marshall, supra. Respondent testified that among the primary reason for enrolling in the Executive MBA program was to network with her classmates, who are in the workforce, to enhance her prospects of get a job. Tr. p. 15, Ll. 6-13; p. 21, Ll. 9-15.

4. Findings of Fact No. 5 is Clearly Erroneous and Fails to Consider Work History.

Finding of Fact No. 5 states, "The claimant provided wage information indicating that graduates of a Traditional MBA program could expect to find entry-level positions in the \$40,000 to \$50,000 range and asserts following graduation from the Executive program, the claimant would be better suited for non-entry level, upper management and executive level positions, at a \$100,000 to \$150,000 range." The Appeals Examiner's finding of fact no. 5 is clearly erroneous. He attributed the testimony to the wrong witness and he did not consider Respondent's work history in his findings.

The wage information was actually provided by Ms. Maille. She testified that she knew graduate assistants who had received a Traditional MBA degree and made \$40,000 to \$50,000 in entry level positions. Tr. p. 28, Ll. 20-24; p. 36, Ll. 14-24. Review of the transcript shows that Ms. Maille provided no competent testimony with respect to wages for graduates of an Executive MBA program in Idaho. Her testimony also related to executives who were employed, not one who was unemployed. She testified:

You know, I mean they were probably starting out coming into the program at 100K and they were moving into 150 to 175. So, you know, this is my experience here, which isn't vast. That's the dollar amount that I have in my mind here. When I lived on the east coast, what I saw – I can't tell you dollar amounts, you know, because I have been out here four years, ..."

Tr. p. 37, Ll. 1-9.


Another problem with Ms. Maille's testimony is that she never addressed how much Respondent or a similarly situated professional could potentially make if she or he got a Traditional MBA with management experience. Ms. Creps or a similarly situated individual would certainly not be looking at an entry level position, but a position that is commensurate with her or his work experience.

Finally, Ms. Maille was unable to name a single Idaho employer that would prefer an Executive MBA over the Traditional MBA. Tr. p. 37, Ll. 21-25; p. 38, L. 1. Ms. Hemly testified that in her work with employers she sees job listings and their requirements and she has never seen a job listing that required an Executive MBA. Tr. p. 42, Ll. 14-17.

CONCLUSION

Based on the foregoing, the Appeal Examiner's decision should be reversed, and the Respondent's training request for the Executive MBA program should be denied, because the costs do not comply with the requirements of the federal regulations on reasonable costs and allowable amounts for training under the Trade Adjustment Assistance program.

Dated this 7th day of November, 2008.



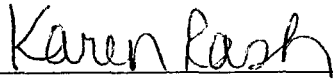
KATHERINE TAKASUGI
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 7th day of November, 2008, I served true and correct copies of the foregoing Appellant Idaho Department of Labor's Brief upon the following by depositing said copy as follows:

United States Mail First Class, postage prepaid:

Ruth A. Creps
1212 N. 5th
Boise, ID 83706



Karen Rash

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

RUTH A. CREPS,)
)
 Claimant/Respondent,)
)
 vs.)
)
)
 STATE OF IDAHO,)
 DEPARTMENT LABOR.)
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 Appellant.)
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IDOL NO 8091-2008

RESPONDENT'S BRIEF

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BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

RUTH A. CREPS,)
)
 Claimant/Respondent,)
)
 vs.)
)
 STATE OF IDAHO,)
 DEPARTMENT LABOR.)
)
 Appellant.)
)
 _____)

IDOL NO 8091-2008

RESPONDENT'S BRIEF

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Nature of the Case

The Appellant, Idaho Department of Labor ("IDOL"), appeals from the Appeals Examiner decision reversing IDOL's determination denying Respondent, Ruth A. Creps' request for training under the Trade Adjustment Assistance ("TAA") program.

Facts and Course of Proceedings

In July 2007, Creps was separated from her employment as a Program Manager at Micron Technology, Inc. earning "approximately \$96,000 per year." (Tr., p.21, Ls.16-17; Exhibits 5-A, 9.) During her eleven years at Micron, Creps

spent approximately two years in technical management before being promoted to supervisory positions of progressively greater responsibility. (Tr., p.14, Ls.12-22.) In September 2007, Creps and other former Micron employees were certified eligible for Federal training adjustment assistance pursuant to the Trade Act of 1974, 19 U.S.C. § 2101-2487, as amended (1988). (Exhibit 5-A; Tr., p.8, Ls.18-22.)

On July 24, 2008, after diligently seeking suitable employment¹ for slightly more than a year without success, Creps submitted her application to IDOL for training under the TAA program. (Exhibit 5-A.) Specifically, Creps requested training in the Executive MBA ("EMBA") program at Boise State University. (Exhibit 5-A.)

IDOL TAA Coordinator, Jennifer Hemly, denied Creps' request. (Exhibit 5.) The notice of determination letter, authored by Coordinator Hemly, stated that "the EMBA cannot be approved due to the high cost," based on information that BSU offered a "traditional MBA program" for approximately \$27,000.00 less to achieve the same "end result."² (Exhibit 6; Tr., p.5, L.21 – p.6, L.24.) The regulatory basis cited in the notice was identified as follows:

¹ The relevant section of the Trade Act defines "suitable employment" as, "[W]ork of a substantially equal or higher skill level than the worker's past adversely affected employment, and wages for such work at not less than 80% of the workers average wage." 19 U.S.C. §2296(e). Based on Creps' employment history, suitable employment is a position in middle to upper level management with an annual salary of approximately \$75,000.

² 20 C.F.R. 617.50(e) requires administering state agencies to provide written notice of determination as to entitlement to TAA informing the applicant of the reason for the determination.

Per TAA Federal Regulations, CFR 617.22 (6) (iii) (b) Allowable amounts for training. In approving a worker's application for training, the conditions for approval in paragraph (a) of this section must be found satisfied, including the assurance that the training is suitable for the worker, is at the lowest reasonable cost, and will enable the worker to obtain employment within a reasonable period of time. An application for training shall be denied if it is for training in an occupational area which requires an extraordinarily high skill level and for which the total costs of the training are substantially higher than the costs of other training which is suitable for the worker.

(Exhibit 6, verbatim.)

Creps timely appealed. (Exhibit 7.)

On September 25, 2008, a telephonic hearing was conducted before an IDOL Appeals Examiner to determine, "whether the Claimants request for training meets the criteria provided in the Trade Act regulations, 20 CFR 617.22 (a)(6)(iii)(B)." (Notice of Telephone Hearing, 9/16/08, p.1; Tr., pp.1-43.)

Ms. Hemly appeared representing IDOL and testified in support of her determination denying Creps' request for training. (Tr., p.4, L.15; p.5, L.5 – p.13, L.11.) Questioned about the reason she denied Creps' training request, the following exchange occurred:

Q: When making your determination for the denial of the claimant's application, you indicated that it was based on suitability and eligibility and cost. It sounds to me like the determination is actually just cost; is that correct?

A: Yes. It is cost.

Q: All right. So, [Creps] met the requirements with respect to the suitability for the program, the executive MBA program?

A: Yes.

Q: It would be a suitable program for her?

A: If it met the six – all six requirements of the trade program.

Q: And the only requirement it does not meet, in your view, is cost?

A: Correct. And that is a requirement of trade.

(Tr., p.10, Ls.10-25.) The Appeals Examiner asked:

Q: Other than the fact, then, that there is a less expensive MBA program available to Ms. Creps, does the executive MBA program meet all the other criteria under the Code of Federal Regulations?

A: Yes.

(Tr., p.8, L.25 – p.9, L.4.)

Ms. Hemly testified that she made her determination to deny Creps' application for training by comparing the BSU programs: "traditional MBA" vs. the EMBA. (Tr., p.6, Ls.3-13.) The information Ms. Hemly used to compare these programs consisted of a conversation with EMBA program manager, Patrick Coyne, and her review of a BSU "brochure" or "flier" about the EMBA degree track. (Tr., p.7, Ls.1-15; p.11, Ls.10-14.)

Ms. Hemly discovered that the traditional MBA program cost approximately \$14,000.00 while the EMBA cost \$41,000.00. (Tr., p.6, Ls.14-18.) Ms. Hemly did not specifically inquire about the reason for the cost disparity between the two programs. (Tr., p.11, Ls.6-10.) Questioned about admission requirements, course work, class size and composition, Ms. Hemley testified she either had inadequate information to compare the MBA programs or failed to do so. (Tr., p.11, L.16 – p.12, L.12.) In

addition, Ms. Hemley was unprepared to provide testimony about Creps' managerial qualifications, deferring to Ms. Creps to provide that information. (Tr., p.8, Ls.10-16.)

Ms. Hemly testified that both programs take two years to complete and both culminate in a MBA degree from the University. (Tr., p.6, Ls.19-25; p.12, Ls.12-15.) Ms. Hemly therefore concluded that the EMBA is merely "a different means to an end. The same end." (Tr., p.12, L.17.) However, Ms. Hemly, conceded that is "possible" that not all MBA degrees are equally valued by employers (Tr., p.12, Ls.18-22), but was "not familiar enough with the executive MBA" to compare its market value with a traditional MBA (Tr., p.12, L.23 – p.13, L.2).

Creps called the Director of Executive Education at Boise State University, Cheryl Maille. As Director of Executive Education, Ms. Maille, who has twenty years of experience with EMBA programs, is also the Director of the BSU EMBA program. (Tr., p.26, Ls.4-7; p.28, Ls.6-12.)

Ms. Maille testified that EMBA participants possess considerable work and management experience (the current class averages twelve or more years of relevant experience) not typically found in traditional MBA students who generally lack real-world experience. (Tr., p.26, L.8 - p.27, L.20.) As a result, EMBA graduates benefit from a substantially different educational experience that has more value in the marketplace. (Tr., p.26, L.8 - p.27, L.20.) For example, in Ms. Maille's experience, graduates of the traditional MBA program seek entry level jobs compared to graduates of the EMBA program who receive

job promotions or significant job changes, approximately 59% in the last class, following graduation. (Tr., p.27, L.21 – p.29, L.20; p.35, L.11 – p.36, L.4.) Thus, a significant job and salary difference exists between graduates of traditional MBA programs, whose jobs pay between \$40,000.00 and \$50,000.00, and EMBA graduates who begin the program making \$100,000.00 increasing to \$150,000.00 to \$175,000.00 after graduating. (Tr., p.36, L.11 – p.37, L.6.) In addition, it is possible for EMBA graduates to experience significant promotions into the top echelons of their companies. (Tr., p.37, Ls.9-25.) These factors make EMBA a more suitable program for people, like Creps, with significant management experience. (Tr., p.34, Ls.9-19; p.35, L.11 - p.36, L.4.)

Ms. Maille explained that the apparent cost disparity between the two programs is not as great as it initially appears when all of the costs of both programs are considered. (Tr., p.32, Ls.9-14.) For example, there are hidden costs inherent in the traditional MBA program including the fact that it takes longer than two years to complete the program and does not include books, materials and fees. (Tr., p.32, Ls.10-14.) In addition, the EMBA program offers unique value added qualities like: a faculty consisting of “our brightest and our best” (Tr., p.29, L.21 – p.30, L.10); personal executive coaching (Tr., p.30, Ls.16-22; p.31, Ls.20-22); guest lecturers (Tr., p.30, L.24 – p.31, L.10; p.32, Ls.1-2); intensive off-site residency programs (Tr., p.32, Ls.2-9); small class size (eighteen in the current class) (Tr., p.34, Ls.6-8); and includes the cost of all books, materials and software (Tr., p.31, L.24 – p.32, L.1).

Ms. Maille testified that, in her opinion, the EMBA program is better suited to Creps' work history and experience than the traditional MBA degree path. (Tr., p.34, Ls.9-19.) Ms. Maille also opined that the training offered by the traditional MBA program is not substantially similar in quality, content, and result as the training offered by the EMBA program. (Tr., p.40, L.16 – p.41, L.15.)

Creps' testified she was last employed as program manager at Micron Technology. (Tr., p.14, Ls.12-15.) Although her prior background was "kind of technical", Creps was predominantly employed supervising employees working on technical programs and projects. (Tr., p.14, Ls.18-22.) The next step on her career path was executive management. (Tr., p.14, Ls.15-16.)

After comparing the advantages and costs of the traditional MBA to the EMBA offered by BSU, Creps chose to enroll in the EMBA program with money from her 401K plan. (Tr., p.14, L.23 – p.15, L.23; p.23, Ls.8-18.) Creps decided the EMBA program would enable her to return to suitable employment at the earliest date. (Tr., p.21, Ls.9-15.) Because the admission criteria used by the EMBA program recognized her existing management experience, Creps avoided waiting to complete pre-admission testing required by the traditional MBA program. (Tr., p.14, L.23 – p.15, L.3; p.19, Ls.11-22.) She also avoided taking five core classes required by the traditional program. (Tr., p.19, Ls.11-17.) Creps found the demand for these courses made it probable she would not be able to complete the MBA within two years. (Tr., p.20, Ls.10-17.) In addition, Creps reasoned the EMBA program would yield better employment prospects by placing her directly in contact with people whose enterprises hire

experienced managers. (Tr., p.15, Ls.3-13; p.20, L.24 – p.21, L.8; p.22, Ls.2-11.)

Delivering closing comments for IDOL, Ms. Hemly summarized the Department's case saying:

... [A]s a Department of Labor representative, I work with employers and I see job listings and requirements and I have never seen a job listing that required an executive MBA. We have no issue with approving an MBA for Ms. Creps. However, because it is the same outcome, her resume is still going to say MBA, and based on the regulation, we feel it is a similar content, quality and outcome and therefore, we go with the low cost provider.

(Tr., p.42, Ls.14-21.)

On September 29, 2008, the Appeals Examiner rendered a decision approving Creps' request for training in the Executive MBA program at BSU, thereby reversing IDOL's determination denying the request for training. (Decision, pp.1-9.) The examiner reasoned that the goal of Trade Act programs like TAA is to "help trade-affected workers return to suitable employment as quickly as possible." (Decision, p.7.) TAA provides training services to assist "certified workers who do not have the skills to secure suitable employment in the existing labor market" by targeting that training to a specific occupation to help affected workers "secure employment at a skill level similar to or higher than their layoff employment, and sustain that employment at the best wage available." (Decision, p.7, emphasis original.)

The Decision then addressed the relevant conditions for approval of training applications imposed on IDOL by 20 CFR 617.22, including that the

training be: "of the shortest duration necessary to return the individual to employment"; "suitable for the worker"; and "available at reasonable cost." (Decision, p.7.) The Decision acknowledged that the reasonable cost requirement precludes approval of training by one provider when "substantially similar training in **content, quality, and result**, can be obtained at a lower cost." (Decision, p.7, emphasis original.)

After considering the record and argument, the Appeals Examiner applied the applicable regulatory conditions for approval of training and concluded that the traditional MBA program and the EMBA program are not equal in content and quality. (Decision, p.7.) Specifically, the Appeals Examiner concluded that:

[A]lthough the result in obtaining an MBA degree is the same, the MBA degrees are not "equal" in every way as the Department asserts. Further, in comparing the wages resulting from employment of each of the training programs to the claimant's previous earnings, the traditional MBA program will likely not meet the stated goal of the Trade Act of getting the claimant to a similar or higher level of employment. The goal of Trade Act programs, including TAA, is to make the claimant whole, again to help workers secure employment at a skill level similar to their layoff employment.

(Decision, p.7.)

IDOL timely appealed. (Notice of Appeal, 10/06/08.)

ISSUE

Has IDOL failed to meet its burden of establishing that the Appeals Examiner erred by approving Creps' application for TAA training with the Executive MBA program at Boise State University?

ARGUMENT

IDOL Has Failed To Establish That The Appeals Examiner Erred By Approving Creps' Application For TAA Training In The Executive MBA Program At Boise State University

A. Introduction

In general, IDOL asserts the evidence does not support the conclusion that Creps' TAA training application should be approved. Specifically, IDOL raises three interrelated arguments: (1) the record does not support the Appeal Examiner's conclusion that the EMBA program is "suitable for the worker and available at reasonable cost" as required by 20 CFR 617.22(a)(6), (Appellants brief pp.5-11); (2) the Appeals Examiner failed to consider "allowable amounts for training" as contemplated in 20 CFR 617.22(b) (Appellants brief pp.12-14); and, (3) finding of fact number 5 concerning comparative wage information is clearly erroneous (Appellants brief pp.15-16).

Contrary to IDOL's contentions, the record supports the decision of the Appeals Examiner.

B. Standard of Review

This issue IDOL raises on appeal to the Commission is one of first impression in Idaho. IDOL asserts I.C. 72-1368(7) provides a de novo standard of review for appeals from the Trade Adjustment Assistance Program. (Appellant's brief, p.5.) Although I.C. 72-1368(7) provides the Commission with authority to decide all claims for review of Appeals Examiner decisions, contrary

to IDOL's assertion, the statute provides no guidance with respect to the standard of review.

The applicable federal regulation, 20 C.F.R. 617.51(a), provides that determinations made under the TAA (Part 167) "shall be subject to review in the same manner and to the same extent as determinations and redeterminations under state law, and only in that manner and to that extent."

Among the paucity of published cases from other jurisdictions addressing judicial review of TAA training determinations based on cost, the decision in *Marshall v. Commissioner of Jobs and Training*, 496 N.W.2d 841 (Minn. App.1993), provides a well considered standard of review. The Court in *Marshall* used the following standard of review:

A denial of training benefits requested under 19 USC 2296 is reviewable in state court as if it had been a denial of conventional employment benefits. 19 U.S.C. 2311(d) (1988); *Talberg v. Commissioner of Economic Sec.*, 370 N.W.2d 686, 688 (Minn. App.1985). Review of a decision to deny unemployment benefits is very narrow. *Markel v. City of Circle Pines*, 479 N.W.2d 383, 383 (Minn. 1992). On review of the Commissioner's decision, findings of fact must be viewed in the light most favorable to the decision, and if there is any evidence reasonably tending to support them, they must be sustained. *Ress v. Abbot Northwestern Hosp.*, 448 N.W.2d 519, 523 (Minn. 1989). The reviewing court is not bound by the Commissioner's conclusions of law, but may exercise its independent judgment. *Markel*, 479 N.W. 2d at 384.

Marshall, 496 N.W.2d at 843.

C. IDOL has Failed to Establish that the Appeals Examiner Erred By Approving Creps' Application For TAA Training

IDOL asserts that the Appeals Examiner misapplied the reasonable cost rule of 20 C.F.R. 617.22(a)(6) with respect to Creps' suitability for EMBA training (20 C.F.R. 617.22(a)(6)(i)); the availability of training substantially similar in quality, content and results at a lower cost than the EMBA program (20 C.F.R. 617.22(a)(6)(ii)); and giving first consideration to the lowest cost training within the commuting area (20 C.F.R. 617.22(a)(6)). (Appellant's brief, pp.5-12.) IDOL's arguments are not supported by authority or the record and fail to present grounds to reverse the Appeals Examiner decision approving Creps' application for TAA training in the EMBA program at BSU.

1. Relevant Federal Statutory And Regulatory Provisions Pertaining To Training Costs Under The TAA

The Trade Act provides federal funding through the TAA program to re-train workers adversely affected by foreign trade. 19 U.S.C. 2296 (1988). An eligible worker's request for retraining benefits "shall be approved" if six determinations are made, 19 U.S.C. 2296(a)(1)(A)-(F), the only determination at issue here is subsection (F): "such training is suitable for the worker and available at a reasonable cost."

The Trade Act mandated the United States Department of Labor to prescribe regulations to set forth criteria to be used in making determinations on each of the six determinations required for approval of training. 19 U.S.C. 2296(a)(9). The regulatory subsection in question here, 20 C.F.R. 617.22(a)(6) and its various subparts, requires approval of TAA training upon IDOL's

determination that the training is “suitable for the worker and available at a reasonable cost.” Suitable training for the worker is that training which the worker is qualified to undertake and complete given the worker’s capabilities, background and experience. 20 C.F.R. 617.22(a)(5)-(6)(i). Available at a reasonable cost means that when two training providers offer training “substantially similar in quality, content and results” within a similar time frame, only the lowest cost provider can be approved. 20 C.F.R. 617.22(a)(6)(ii). In addition, subpart (6)(ii) also requires disapproval of training costs that are “unreasonably high in comparison with the average costs of training other workers in similar occupations at other providers.” *Id.*

The provisions of the TAA are liberally construed to effectuate Congress’ remedial intent. *Former Employees of Merrill Corp. v. U.S.*, 387 F. Supp. 2d 1336 (Ct. International Trade, 2005.)

2. State Case Law Interpreting Reasonable Cost Determinations Under The TAA

This is a case of first impression in Idaho. Appellant cites several cases from other states affirming or remanding determinations denying TAA requests

for professional training due to cost considerations.³ Although instructive, the cases are not controlling because they are from other jurisdictions, but more importantly, because when properly read and applied to the facts in this case, they support the Decision of the Appeals Examiner to approve Creps' application for TAA training.

Appellant cites *Marshall v. Commissioner*, 496 N.W. 2d 841 (Minn. Ct. App. 1993) for the proposition that degreed professionals bare a heavy burden to demonstrate training is reasonable and necessary. (Appellant's brief, p.7.) Marshall held a B.A., M.B.A., had eight years of experience as an accountant, treasurer/comptroller/chief financial officer, and financial analyst when he applied for under the TAA to attend law school. *Marshall*, 496 N.W.2d at 842. Statistical evidence was submitted by the Department showing employment opportunities were available and expected to increase for individuals with Marshall's qualifications. In addition, Marshall had been qualified to apply for several "suitable" jobs and other suitable job opportunities were listed in the Department's job bank. *Marshall*, 496 N.W.2d at 843-44.

³ Appellant cites *Ford v. Pennsylvania*, 409 A.2d 1209 (Pa. Commw. Ct. 1980), apparently to support its argument that the decisions of these State Courts denying TAA benefits bases on cost should be given deference to promote uniform application of federal regulations. *Ford* is distinguishable because it concerns the application of a regulatory definition that is subject to reasonably objective application. (calculation of calendar based eligibility requirement using a Department guideline excluding paid vacation time from the time during which an individual performs services for his employer), *Id.* at 1211. In contrast, the regulations at issue here mandate the Department to consider each case individually and weigh numerous factors before making a reasonable cost determination.

Citing the Department's decision that approval of benefits was not justified given the evidence that Marshall was currently employable and the significant cost of law school (\$27,000.00), Minnesota Court wrote that it could not say the basis for the Department's decision to deny benefits was "arbitrary or capricious." *Marshall*, 496 N.W.2d at 843.

Unlike Marshall, Creps does not have multiple degrees and has not had opportunities to interview for suitable employment. The evidence presented before the appeals examiner established that Creps sought training assistance, not to collect another degree as an enhancement, but rather to obtain suitable employment through networking and advanced education reasonably calculated to result in "suitable employment." Contrary to IDOL's assertion on appeal, there was no evidence in the record rebutting testimony provided by Creps and Ms. Maille concerning the superior ability of the EMBA program to provide Creps the best opportunity to return to suitable employment at the earliest date.

In *Nevarre v. Unemployment Compensation Board of Review*, 675 A.2d 361 (Pa. Commw. Ct. 1996), the case was remanded for additional evidence and explicit finding on comparison of requested costs of training to the cost of other suitable training. *Id.* at 366. The Court observed that the Trade Act does not place specific monetary limits on individual training programs that can be approved by State administrative entities. *Id.* at 363. The only limit is on the total funding allocated by the U.S. Department of Labor to each State every

fiscal year.⁴ 19 USC 2296(a)(2). When distributing TAA allocations, the States are required to balance the conflicting interests of individual applicants for training with collective training costs of other qualified applicants in their jurisdiction. State agencies administering the TAA program are vested with discretion in approving or denying requests for training provided they adhere to regulatory criteria. *Navarre*, 675 A,2d at 363-364. Denial of excessive or prohibitive training costs is sustainable on review after weighing total costs with relation to average training costs and the total cost of a program as compared to costs of other suitable training.

3. Creps Established Her Suitability For The EMBA Program

Appellant raises the question of Creps' suitability for the EMBA program for the first time on appeal. (Appellant's brief, pp.13-14.) The record demonstrates that the issue to be decided at the hearing before the Appeals Examiner was rightfully limited to comparison of costs between the traditional MBA program and the EMBA program at Boise State University. (Notice of Hearing).

Appellant's attempt to find new reasons to support IDOL's errant determination denying Creps' training application for the first time on appeal to the commission precluded by is underscored by the requirement of 20 C.F.R. 617.50(e) for IDOL to provide applicant's with the reason(s) for the determination. Appellant blithely asserts the Notice of Determination issued by

⁴ This limit is apparently not a factor in Idaho. Our State historically carries large unused TAA funding surpluses forward from prior fiscal years. For example, the most recent report available to Creps indicates Idaho's available TAA training fund balance was \$4,867,246.00 as of March 31, 2001. See Appendix A.

Ms. Hemly citing CFR 617.22(6)(iii)(b) was harmless error because the “correct citation,” 617.22(b) was quoted verbatim in the Determination. (Appellant’s brief, p.4, fn.2.) However, merely citing a regulatory provision, especially incorrectly, fails to provide fair notice of the reason(s) the application was denied. If that was the rule, IDOL would be able to deny applications by simply citing 20 CFR 617.22; a prospect that clearly appeals to IDOL but wholly fails to notify applicants of the reason their application was denied and how to meet the Department’s disapproval.

The **reason** Ms. Hemly provided for denying Creps application in the Notice of Determination is limited to the “high cost” and the fact that the “end result” of the programs is the same. (Exhibit 6.) In light of the regulation governing notices of determination and the failure of IDOL to articulate all of the reasons for denying. If IDOL sought to challenge Creps’ application for training based on her suitability for the EMBA program, they were required by regulation to notify Creps of that reason in the notice of determination, not wait to assert the issue for the first time on appeal. The Commission should not consider IDOL’s argument concerning Creps’ suitability for training in the EMBA program.

Even if the Commission considers IDOL’s suitability argument, Creps established she was “qualified to undertake and complete such training” under 20 C.F.R. 617.22(a)(5), Creps also satisfied the requirement that the training is suitable in light of her capabilities, background and experience. Nonetheless, Appellant attempts to minimize Creps’ employment history as, “pretty much

technical with some supervisory experience of 10 to 15 years.” (Appellant’s brief, p.3.) Creps’ actual testimony, as cited by Appellant, was:

My past background was kind of technical, but I have mainly been managing programs and projects, being a program manager, for the last, I don’t know, ten years, something like that, with supervisory experience.

(Tr., p.14, Ls.18-21.) Creps’ suitability for the EMBA program is demonstrated by her admission to the program, which the Appellant concedes has rigorous experience requirements for admission. (Appellant’s brief, pp.13-14 (the EMBA program requires an extraordinarily high skill level); Tr., p.7, L.23 – p.8, L.9 (Hemly testified six years of professional experience preferred with steady career progression).) IDOL’s suggestion that “The Executive MBA program is an extraordinarily high skill level program considering Respondent’s background” -- which Appellant apparently believes consists of being “laid off from Micron,” remaining “not currently employed,” and supervisory experience with aspirations of promotion to an executive position (Appellant’s brief, p.14) is curious. IDOL received Creps’ detailed employment history more than a year. In addition, Creps’ status as an affected worker eligible for TAA training assistance created numerous regulatory obligations for IDOL, including the requirement for IDOL to make individualized application determinations of suitability for training (*Eg.* 19 USC 2269 (factors to be considered in making a determination of eligibility are all based on evaluation of the individual; 20 CFR 617.22(a)(1) – (6) (same); Nevarre, 675 A.2d at 363.

In addition, Ms. Hemly provided no testimony on suitability. The “testimony” repeatedly attributed to Ms. Hemly in appellant’s brief that she had

never seen a job listing requiring an EMBA was actually closing comment. (Appellant's brief, pp.10, 16; Tr. p.42, Ls.6-21) Argument is not evidence. Ms. Hemly's comments were made after she was released as a witness (Tr., p.13, Ls.12-18; p.42, Ls.6-21) and Creps was not able to cross-examine Ms. Hemly about her comments.

4. The Record Supports The Determination That The EMBA Program Was Properly Approved Considering A Comparison Of The Cost of The Program With The Traditional MBA Program

IDOL contends the Appeals Examiner failed to consider the factors of what constitutes "available at a reasonable cost" under 20 CFR 617.22(a)(6)(ii) in light of the evidence. (Appellant's brief, p.9.) IDOL also asserts there was no competent evidence to support the, Appeals Examiner's conclusion that the traditional MBA and EMBA are "substantially different in quality and content" and the MBA degrees were not equal.⁵ (Appellant's brief, pp.9-10.)

Contrary to IDOL's assertions, the only evidence adduced at the hearing concerning the comparison between the traditional MBA program and the EMBA program was that they are not substantially similar in quality, content and result despite the fact that both programs culminate in a MBA degree. On appeal, IDOL chooses to challenge the unrebutted testimony of Creps and Ms. Maille claiming it was biased. (Appellant's brief, p.10, fn 3, 4, 5.) Again, IDOL waits until appeal to raise the issue of bias for the first time.

⁵ Strictly construed, the regulation concerns comparison of different training providers. Accordingly, the regulation is arguably inapplicable to the two programs under consideration here because they are both from a single provider.

The Appeals Examiner was in the best position to consider the weight to give to all of the witnesses. IDOL's speculative comments about witness bias and its effect, if any, on the outcome of the proceeding could have been remedied by appropriate cross-examination of the witnesses. Instead, Ms. Hemly remained mute and appellant's argument is only bald supposition unsupported by any testimony.

IDOL also complains that the cost of requested training was unreasonably high in comparison with the average cost of training other workers in similar occupations exceeded parameters of regulation on "available at reasonable cost. (Appellant's brief, p.11.) However, IDOL failed to produce any evidence to support its assertion.

Next, IDOL turns to another issue that was not provided as a reason for its determination to deny Creps TAA training claiming the examiner misapplied 20 CFR 617.22(a)(6)(iii)(B) requiring consideration of the lowest cost training within the commuting area. (Appellant's brief, p.11.) Accordingly, the argument should not be considered for the first time on appeal. In addition, even if true, IDOL's argument would not change the outcome because the same cost analysis is employed to reach the determination that the EMBA program was suitable and reasonable under 20 CFR 617.22(a)(6)(ii). The regulatory concern addressed in 20 CFR 617.22(a)(6)(iii)(B) is avoiding incurring unnecessary cost associated with commuting when a commute is unnecessary due to a local low cost training provider. Because both programs in question are at BSU there is

no commuting to consider, making the application 20 CFR 617.22(a)(6)(iii)(B), or the failure to apply it, immaterial.

IDOL raises another new argument on appeal by claiming for the first time on appeal that the cost of requested training exceeds IDOL's administrative cap for individual training requests of \$16,000.00. (Appellant's brief, p.12.) To support this specious argument, IDOL points to Exhibit 3, which appears to be an internal memo from 2004 setting approval authority limits on IDOL employees administering the TAA. Once again, IDOL failed to cite the "soft cap" of \$16,000.00 as a reason for denying Creps' request for benefits. Although IDOL has authority to set soft caps to ensure sufficient funding exists to train the maximum number of affected workers,⁶ and manage its personnel by setting limits on program approval authority (*see, Ostapenko v. Department of Employment and Economic Development*, WL 2129769 (Minn. App. 2006) (department may set caps on training amounts based on number of workers in need of training), it is also abundantly clear that the Trade Act, the TAA, and the regulations contemplate maximum flexibility to meet the goal of finding suitable employment for the unique experience and work history of every individual worker seeking assistance (*e.g. Navarre*, 675 A,2d at 363-364 (state agencies administering the TAA program are vested with discretion in approving or denying requests for training provided they adhere to regulatory criteria).

⁶ This is apparently not a factor in Idaho. Our State historically carries large unused TAA funding surpluses forward from prior fiscal years. For example, the most recent report available to Creps indicates Idaho's available TAA training fund balance was \$4,867,246.00 as of March 31, 2001. See Appendix A.

The assertion made by IDOL that the Appeals Examiner failed to consider regulation of allowable costs as required by 20 CFR 617.22(a)(6) (Appellant's brief, pp.12-13), is without merit. IDOL again attempts to raise a new issue on appeal. For the same reasons previously discussed, the claim that Creps application failed to satisfy a regulatory approval condition concerning an occupational area requiring an extraordinarily high skill level whose training costs are substantially higher than other costs of other suitable training, is precluded because it was not given as a reason for the Department's determination to deny her training application.

Even if the Commission considers this argument, the evidence established that Creps' skill level was appropriate to the training she sought. There is no evidence to suggest Creps applied for a program that was extraordinarily beyond her skill level. To the contrary, the evidence established that Creps' secured admission to the program based on her experience and was excelling in the program. In addition, the evidence that her participation in the EMBA program would likely to enable her to secure "suitable employment" while the traditional MBA program would not yield the same result. In addition, due to the academic admission requirements Creps would have to meet and competition for core classes in the traditional MBA program, the EMBA achieves the regulatory goal of obtaining "suitable employment" for Creps at the earliest possible date.

D. IDOL Has Failed To Establish That Finding of Fact No.5 Is Clearly Erroneous

IDOL asserts that Finding of Fact No.5 is clearly erroneous. (Appellant's brief, pp.15-16.) Contrary to IDOL's assertion, the only evidence adduced at the hearing regarding market comparisons between the type of jobs and salaries available to EMBA graduates and traditional MBA graduates made it clear that the EMBA program is the only training option that provides Creps with the opportunity to meet the statutory goal of securing "suitable employment" at the soonest date.

The question of whether a claimant has satisfied statutory eligibility requirements for benefits is a fact question for the Commission whose decision will not be overturned on appeal if supported by substantial and competent evidence. *E.g. Clay v. BMC West Truss Plant*, 127 Idaho 501, 903 P.2d 90 (1995). Cognizant of distinctions between review of Commission decisions by the Idaho Supreme Court and review of Appeals Examiner decisions by the Commission, the general rule is sound and should be applied to the factual findings made by the Appeals Examiner in this case. *E.g. Scrivner v. Service IDA Corp.*, 126 Idaho 954, 895 P.2d 555 (1995).

IDOL's contention that the Examiner's finding of fact is clearly erroneous based on its assertion that the Examiner attributed a statement in the finding to the wrong witness is absurd. (Appellant's brief, p.15.) According to IDOL, the finding should be discarded because the Appeals Examiner wrote "The claimant provided wage information," while the record shows Ms. Maille provided the wage information. (Appellant's brief, p.15.) IDOL, however, provides no

authority to support its claim that, even if true, such a mistake meets the clearly erroneous standard necessitating reversal. In fact, when the Examiner's findings are read in their entirety, it is clear that the Examiner is referring to the "claimant" as a party, not as an individual as IDOL's argument would require. (Decision, p.2.) Similarly, the Examiner refers to activity attributable to Ms. Hemly as "the department." (Decision, p.2.)

IDOL also contends Ms. Maille was not competent to testify about wages of EMBA graduates in Idaho, her testimony applied only employed executives, and she failed to testify concerning wage potential of traditional MBA graduates with Creps' experience. (Appellant's brief, p.15.) Once again, IDOL saves its objections for appeal. IDOL had the opportunity to cross-examine Ms. Maille on her competence to provide wage testimony. As the finder of fact, the Appeals Examiner was entitled to decide how much weight to give testimony. Since Ms. Mallie's testimony about the job and wage differences between the two MBA programs was uncontroverted, Finding of Fact No.5 was supported by the evidence and was not clearly erroneous.

CONCLUSION

Respondent/Claimant, Ruth A. Creps, respectfully requests the Commission to affirm the decision of the Appeals Examiner approving her application for TAA training in the EMBA program at Boise State University.

Dated this 14th day of November 2008.



RUTH A. CREPS

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 14th day of November 2008, I filed and served true and correct copies of the foregoing RESPONDENT'S BRIEF by Prepaid United States First Class Mail, on the following:

Idaho Industrial Commission
P.O. Box 83720
Boise, Idaho
83720-0041

Ms. Katherine Takasugi
Office of the Idaho Attorney General
Idaho Department of Labor
317 W. Main Street
Boise, Idaho
83735

APPENDIX A

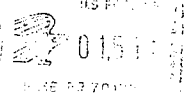
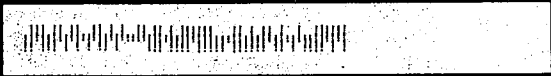
Appendix II: TAA Training Funds Available in Fiscal Year 2007, by State

State	Total training funds awarded fiscal years 2005-2007	Cumulative expenditures as of March 31, 2007	Cumulative obligations as of March 31, 2007	Available balance as of March 31, 2007
Alabama	\$8,195,181	\$2,004,196	\$3,452,814	\$2,738,171
Alaska	\$1,433,731	\$760,634	\$79,679	\$593,418
Arizona	\$7,828,584	\$2,360,839	\$526,463	\$4,941,282
Arkansas	\$6,456,865	\$4,093,208	\$2,363,657	\$0
California	\$25,047,061	\$19,671,745	\$2,788,899	\$2,586,417
Colorado	\$4,953,707	\$1,954,143	\$1,879,097	\$1,120,467
Connecticut	\$5,501,021	\$3,900,933	\$1,105,571	\$494,517
Delaware	\$74,221	\$15,672	\$44,782	\$13,767
District of Columbia	\$0	\$0	\$0	\$0
Florida	\$8,006,934	\$368,967	\$0	\$7,637,967
Georgia	\$5,030,561	\$2,508,596	\$3,501,456	(\$979,491)
Hawaii	\$813,884	\$10,831	\$1,077	\$801,976
Idaho	\$7,695,483	\$2,796,569	\$31,668	\$4,867,246
Illinois	\$26,770,849	\$18,351,370	\$2,889,007	\$5,530,472
Indiana	\$20,784,317	\$18,144,273	\$2,640,044	\$0
Iowa	\$13,248,340	\$13,046,677	\$201,663	\$0
Kansas	\$5,428,878	\$1,120,875	\$0	\$4,308,003
Kentucky	\$14,083,818	\$11,608,500	\$534,754	\$1,940,564
Louisiana	\$1,968,150	\$56,943	\$108,884	\$1,802,323
Maine	\$13,996,493	\$5,972,080	\$335,840	\$7,688,573
Maryland	\$1,837,639	\$939,963	\$0	\$897,676
Massachusetts	\$18,040,564	\$12,181,017	\$1,437,510	\$4,422,037
Michigan	\$40,549,718	\$26,388,103	\$14,264,491	(\$102,876)
Minnesota	\$12,789,533	\$2,112,664	\$461,582	\$10,215,287
Mississippi	\$5,174,783	\$1,269,317	\$2,140,853	\$1,764,613
Missouri	\$14,736,635	\$8,241,790	\$3,088,139	\$3,406,706
Montana	\$3,652,112	\$1,789,375	\$0	\$1,862,737
Nebraska	\$1,687,832	\$570,758	\$378,945	\$738,129
Nevada	\$513,227	\$10,619	\$30,729	\$471,880
New Hampshire	\$1,771,447	\$1,137,377	\$155,893	\$478,177
New Jersey	\$5,787,388	\$3,965,843	\$0	\$1,821,545
New Mexico	\$1,929,494	\$976,519	\$32,576	\$920,400
New York	\$9,008,359	\$3,103,447	\$1,428,342	\$4,476,570
North Carolina	\$39,096,982	\$29,177,101	\$9,019,173	\$900,709

**Appendix II: TAA Training Funds Available in
Fiscal Year 2007, by State**

State	Total training funds awarded fiscal years 2005-2007	Cumulative expenditures as of March 31, 2007	Cumulative obligations as of March 31, 2007	Available balance as of March 31, 2007
North Dakota	\$448,443	\$269,145	\$28,514	\$150,784
Ohio	\$21,648,217	\$17,069,186	\$4,579,031	\$0
Oklahoma	\$5,129,382	\$1,211,207	\$3,918,175	\$0
Oregon	\$17,846,771	\$12,033,344	\$1,089,528	\$4,723,899
Pennsylvania	\$56,535,245	\$19,646,291	\$13,349,337	\$23,539,618
Puerto Rico	\$114,186	\$0	\$6,808	\$107,378
Rhode Island	\$4,687,047	\$3,602,430	\$831,605	\$253,012
South Carolina	\$11,122,441	\$6,088,589	\$0	\$5,033,852
South Dakota	\$2,697,874	\$2,049,796	\$208,913	\$439,164
Tennessee	\$8,339,961	\$2,451,807	\$4,584,862	\$1,303,293
Texas	\$37,573,203	\$21,284,020	\$10,267,342	\$6,021,841
Utah	\$4,878,949	\$211,352	\$462,791	\$4,204,806
Vermont	\$1,552,740	\$1,001,541	\$0	\$551,199
Virginia	\$22,025,129	\$14,432,967	\$4,513,630	\$3,078,532
Washington	\$46,107,973	\$10,153,382	\$0	\$35,954,591
West Virginia	\$16,327,707	\$7,479,597	\$8,073,984	\$774,126
Wisconsin	\$26,912,615	\$18,791,272	\$112,249	\$8,009,094
Wyoming	\$89,533	\$79,611	\$1,553	\$8,369
Grand Total	\$617,931,207	\$338,456,479	\$106,951,908	\$172,512,819

Source: Department of Labor and GAO analysis.



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 IDAHO INDUSTRIAL COMMISSION
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 BOISE, IDAHO

83720-0041

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 IDAHO INDUSTRIAL COMMISSION

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

RUTH A. CREPS,)
)
 Employer,)
 vs.)
)
 IDAHO DEPARTMENT OF LABOR.)
)
 _____)

IDOL #8091-T-2008

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of November, 2008, a true and correct copy of the **Claimant's respondent's brief, filed November 14, 2008**, was served by regular United States mail upon the following:

DEPUTY ATTORNEY GENERAL
IDAHO DEPARTMENT OF LABOR
STATE HOUSE MAIL
317 W MAIN STREET
BOISE ID 83735

cjh


Assistant Commission Secretary

cc: RUTH A CREPS
1212 N 5TH
BOISE ID 83706

LAWRENCE G. WASDEN
ATTORNEY GENERAL

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2008 NOV 28 10 49 13
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INDUSTRIAL COMMISSION

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

RUTH A. CREPS,)
)
Claimant/Respondent,)

vs.)

STATE OF IDAHO,)
DEPARTMENT LABOR.)
)
Appellant.)

↑
IDOL NO. 8091-2008

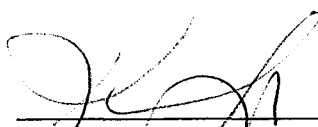
IDAHO DEPARTMENT OF LABOR'S
MOTION TO STRIKE APPENDIX A
OF RESPONDENT'S BRIEF

COMES NOW, the Appellant Idaho Department of Labor, ("Department") by and through its counsel of record, Katherine Takasugi, Deputy Attorney General, and files this motion to strike Appendix A of Respondent's brief. Appellant moves to strike because Appendix A contains a document that was not part of the record during the proceedings before the Appeals Bureau.

On November 21, 2008, the Appellant received a copy of the Respondent's brief.¹ Attached to Respondent's brief as Appendix A is a document entitled "Appendix II: TAA Training Funds Available in Fiscal Year 2007, by State". This document was not part of the record during the proceedings before the Appeals Bureau. Under R.A.P.P. 4(B) written argument must be based upon the evidence established in the evidentiary record. R.A.P.P. 7(A) provides that the record of evidence before the Commission shall consist of either the tape recording or the transcript of any hearing conducted by the appeals examiner, together with the exhibits admitted into evidence by the Appeals Examiner and the testimony and exhibits presented to the Industrial Commission at its hearing, if one is held. This document should be stricken because it was not admitted into evidence during the proceedings before the Appeals Bureau, nor has the Industrial Commission conducted a hearing to consider new evidence in this case.² Because the document is not part of the record, it should not be considered by the Industrial Commission in the appeal of this case.

Based on the foregoing, the Appellant respectfully requests that the Industrial Commission strike Appendix A to Respondent's Brief.

DATED this 28th day of November, 2008.



Katherine Takasugi
Deputy Attorney General
Attorney for the State of Idaho,
Department of Labor


¹ The Certificate of Mailing indicates that Respondent served her brief on the Appellant on November 14, 2008. However, the brief was returned to the sender by the U.S. Postal Service due to insufficient postage. See Affidavit of Katherine Takasugi in support of Motion to Strike.

² The Industrial Commission denied the Respondent's request for new hearing in its Order dated filed on October 20, 2008.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a copy of the foregoing IDAHO DEPARTMENT OF LABOR'S MOTION TO STRIKE APPENDIX A OF RESPONDENT'S BRIEF, was mailed, postage prepaid, this 28TH day of November, 2008, to:

RUTH A. CREPS
1212 N. 5TH STREET
BOISE, ID 83706



Katherine Takasugi

LAWRENCE G. WARDEN
ATTORNEY GENERAL

CRAIG G. BLEDSOE - ISB# 3431
KATHERINE TAKASUGI - ISB# 5208
TRACEY K. ROLFSEN - ISB# 4050
CHERYL GEORGE - ISB# 4213
Deputy Attorneys General
Idaho Department of Labor
317 W. Main Street
Boise, Idaho 83735
Telephone: (208) 332-3570 ext. 3184

2008 NOV 28 10 A 9 14
RECEIVED
INDUSTRIAL COMMISSION

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

RUTH A. CREPS,)	
)	
Claimant/Respondent,)	
	)	IDOL NO. 8091-2008
vs.)	
)	
STATE OF IDAHO,	)	AFFIDAVIT OF KATHERINE
DEPARTMENT LABOR.	)	TAKASUGI IN SUPPORT OF IDAHO
	)	DEPARTMENT OF LABOR'S
	)	MOTION TO STRIKE APPENDIX A
Appellant.	)	OF RESPONDENT'S BRIEF
)	
)	
)	
)	

STATE OF IDAHO)
) ss.
County of Ada)

KATHERINE TAKASUGI, first being duly sworn upon oath, deposes and says:


1. The Affiant is the Deputy Attorney General representing the Respondent, State of Idaho, Department of Labor ("Department"), in the above-entitled matter.
2. The Affiant is familiar with the above entitled case and has reviewed the record and the evidence from the hearing before the Idaho Department of Labor's Appeals Bureau.

AFFIDAVIT OF KATHERINE TAKASUGI IN SUPPORT OF IDAHO DEPARTMENT OF LABOR'S MOTION TO STRIKE APPENDIX A OF RESPONDENT'S BRIEF- 1

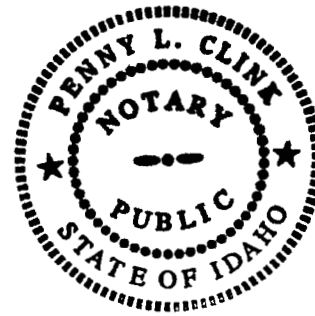
3. On November 21, 2008, the Department received a copy of Respondent's brief. Attached hereto as Exhibit A is a copy of the envelope in which the brief was mailed.

Further, your affiant sayeth naught.


Dated this 28th day of November, 2008.



KATHERINE TAKASUGI
Deputy Attorney General



SUBSCRIBED AND SWORN To before me this 28th day of November, 2008.



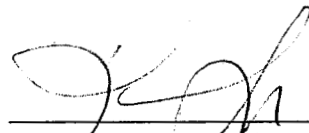
NOTARY PUBLIC FOR IDAHO
RESIDING AT BOISE, IDAHO
COMMISSION EXPIRES:

My Commission Expires
10-29-2014

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a copy of the foregoing AFFIDAVIT OF KATHERINE TAKASUGI IN SUPPORT OF IDAHO DEPARTMENT OF LABOR'S MOTION TO STRIKE APPENDIX A OF RESPONDENT'S BRIEF, was mailed, postage prepaid, this 28th day of November, 2008, to:

RUTH A. CREPS
1212 N. 5TH STREET
BOISE, ID 83706



Katherine Takasugi

RUTH CREPS
1212 N. 5th
BOISE, IDAHO

83702

RETURN TO SENDER
ADDRESSER WILL NOT
ACCEPT POSTAGE DUE

STP

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OFFICE OF THE ATTORNEY GENERAL
IDAHO DEPARTMENT OF LABOR
317 W. MAIN STREET
BOISE, IDAHO 83725

Exhibit A

Commission to rebut IDOL's claim, made for the first time on Appeal to the Commission, that IDOL has limited funding that it is obliged to distribute to eligible TAA applicants. The Document demonstrates the adequacy of Federal funding allocated to IDOL under the TAA program to grant Respondent's TAA Training request without jeopardizing the Department's obligation to fund other TAA applications.

IDOL's motion to strike does not challenge the intrinsic validity of the document or provide any additional information to the Commission concerning TAA funding constraints applicable to the Applicant, Respondent Creps.

Finally, having had the opportunity to object and respond by its Motion to Strike Appendix A, IDOL has not demonstrated any prejudice as a result of the Appendix or the manner in which it was filed.

Wherefore, premises considered, Respondent Creps respectfully requests the Commission deny IDOL's Motion to Strike Appendix A.

DATED this 1st day of December, 2008.




Ruth A. Creps, Pro Se

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing RESPONDENT'S REPLY TO IDOL'S MOTION TO STRIKE APPENDIX A was filed with the Industrial Commission of the State of Idaho by hand delivery, and served upon the Attorney General by depositing it in the U.S. Mail, First Class postage prepaid, on this 1st day of December, 2008.

LAWRENCE G. WASDEN
ATTORNEY GENERAL

KATHERINE TAKASUGI
DEPUTY ATTORNEY GENERAL
317 W. MAIN ST.
BOISE, IDAHO 83735



Ruth A. Creps, Pro Se

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

RUTH A CREPS,)
)
 Claimant,)
)
 vs.)
)
 IDAHO DEPARTMENT OF LABOR.)
 _____)

IDOL # 8091-T-2008

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of December 2008 a true and correct copy of **Claimant/Respondent's Reply to IDOL's Motion to Strike Appendix A.**, filed the **1st day of December, 2008** was served by regular United States mail upon the following:

DEPUTY ATTORNEY GENERAL
IDAHO DEPARTMENT OF LABOR
STATEHOUSE MAIL
317 W MAIN STREET
BOISE ID 83735

mcs



Assistant Commission Secretary

cc: RUTH A CREPS
1212 N 5TH
BOISE ID 83706

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

RUTH A. CREPS,)
)
 Claimant/Respondent,)
)
 vs.)
)
 IDAHO DEPARTMENT OF LABOR,)
)
 Appellant.)

IDOL # 8091-T-2008
DECISION AND ORDER
FILED
JAN 08 2009
INDUSTRIAL COMMISSION

Appellant, Idaho Department of Labor, appeals to the Industrial Commission a Decision issued by Idaho Department of Labor (“IDOL” or “Department”) allowing Claimant, Ruth A. Creps, her request for training. On October 10, 2008, IDOL submitted a briefing request which was granted in our Order dated October 14, 2008. On October 16, 2007, Claimant submitted her own request for briefing as well as a request for a new hearing. Claimant’s request for a hearing was denied in our Order filed October 20, 2008. However, that Order referred Claimant back to the briefing schedule found in our October 14, 2008 Order. IDOL submitted their brief on November 7, 2008. On November 19, 2008, Claimant filed her brief. Included with Claimant’s brief was additional evidence submitted as Appendix A. On November 28, 2008, IDOL filed a Motion to Strike Appendix A. Claimant submitted her response to IDOL’s Motion to Strike on December 1, 2008. We will address that issue below.

The undersigned Commissioners have conducted a *de novo* review of the record pursuant to Idaho Code § 72-1368(7) and opinions issued by the Idaho Supreme Court. The Commission has relied on the transcript of the hearing the Appeals Examiner held on September 25, 2008, along with the exhibits [1 through 9] admitted into the record during that proceeding.

MOTION TO STRIKE

As stated above, Claimant's brief included an additional document that was not submitted into the evidentiary record during the Appeals Examiner's hearing. IDOL filed a Motion to Strike this document on the basis that it is not part of the evidentiary record and, therefore, is not in accordance with Rules 4(B) and 7(A) of the Rules Appellate Practice and Procedure (RAPP). (IDOL's Motion to Strike, filed November 28, 2008.) Claimant contends that Appendix A is rebuttal evidence to newly established assertions made by IDOL in its brief. (Claimant's Reply to IDOL's Motion to Strike, filed December 1, 2008.) Further, Claimant argues that IDOL's Motion to Strike does not challenge the intrinsic validity, provide new information concerning TAA funding constraints applicable to Claimant, nor does it demonstrate any prejudice. (Claimant's Reply to IDOL's Motion to Strike, filed December 1, 2008.) Claimant asks the Commission to take judicial notice of this evidence.

RAPP 4 (B) provides that written argument must be based upon the evidence established in the evidentiary record. RAPP 7(A) provides, in pertinent part, that the evidentiary record consists of:

"either the tape recording or the transcript of any hearing conducted by the appeals examiner, together with the exhibits admitted into evidence by the Appeals Examiner...The Commission may also consider written argument submitted by an interested party. Written argument must be based upon evidence established in the record."

In other words, a party's brief is not an appropriate vehicle in which to submit additional evidence before the Commission.

Here, a portion of Claimant's argument is based upon a document that was not previously admitted into the record. Claimant has not expressly requested that the record be augmented to include this proposed evidence. Instead, Claimant requests that we take judicial notice of this

DECISION AND ORDER - 2

document. However, judicial notice requires that the evidence is a well-known and indisputable fact. We find it difficult to place the proposed evidence within this preview. Furthermore, we find that the record includes exhibits, testimony, and extensive briefing. Ample evidence was provided for the issue in this claim. As such, we find justice does not require that additional evidence be submitted in order to complete the evidentiary record. Therefore, IDOL's Motion to Strike Appendix A of Claimant's brief is GRANTED. The Commission will consider all of Claimant's brief excluding Appendix A.

FINDINGS OF FACT

Based on the evidence and testimony set forth at the Appeals Examiner's hearing, the Commission sets forth its own Findings of Fact as follows:

1. Claimant lost her job with Micron as a program manager in July, 2007. In her base period of April 2, 2006 through March 31, 2007, Claimant earned \$89,602.23 with this Employer.
2. On July 24, 2008, Claimant applied for Trade Adjustment Assistance to enter into an executive MBA program at Boise State University. The total cost of the program, including books, tuition and costs, is approximately \$41,000.
3. On August 7, 2008, Jennifer Hemly, Trade Adjustment Assistance Coordinator for the Idaho Department of Labor, issued a Determination denying Claimant's request. This denial was due to the inflated cost of the program and that Boise State University offered a traditional MBA program for approximately \$14,000.
4. Both options are two year programs and result in the same degree. However, the two programs differ in that the executive MBA program entrance requirements demand applicants with more professional experience than the traditional MBA program. Additionally, class sizes are smaller and the courses themselves are more integrated in subject matter, rather than the traditional MBA's single discipline approach.

DISCUSSION

Claimant lost her position as a program manager with Micron. Because Claimant lost her job due to no fault of her own in a trade related restructuring, Claimant was qualified to apply for Training Adjustment Assistance (“TAA”). Claimant applied for the executive MBA (“EMBA”) program at Boise State University (“BSU”). The total cost of the two year program was estimated at \$41,000, inclusive of books, materials and fees. However, IDOL denied that request because BSU offered a traditional MBA for approximately \$14,000. The two programs ended with the same degree and both were two year programs. Based on the exceedingly high cost of the EMBA and because IDOL believes that the traditional MBA is also suitable training for Claimant, IDOL denied Claimant’s application for TAA benefit for the EMBA.

Approval of training under the TAA is governed by federal regulations expressed in 20 C.F.R. 617.22(a) (2006). Under that provision, it is up to IDOL to determine whether Claimant has met six criteria in order to receive training benefits. Those criteria include: 1) there is no suitable employment (which may include technical and professional employment) available for an adversely affected worker; 2) the worker would benefit from appropriate training; 3) there is a reasonable expectation of employment following completion of such training; 4) training approved by the Secretary is reasonably available to the worker from either governmental agencies or private sources (which may include area vocational technical education schools, as defined in 19 U.S.C. § 2302, and employers); 5) the worker is qualified to undertake and complete such training; and 6) such training is suitable for the worker and available at a reasonable cost. 20 C.F.R. 617.22. A claimant must satisfy all six criteria in order to be approved. In this case, the only criterion at issue is the last requirement, whether the training is suitable for the worker and available at a reasonable cost. There is no disagreement that

DECISION AND ORDER - 4

Claimant satisfied the other five criteria. (Hearing Transcript, p. 10.)

Therefore, the focus of this debate centers on whether or not the EMBA and the traditional MBA are so similar that cost becomes the only consideration. “Available at a reasonable cost” is defined in 20 C.F.R. 617.22(a)(6)(ii)(2006), stating in pertinent part:

Available at a reasonable cost means that training may not be approved at one provider when, all costs being considered, training substantially similar in quality, content and results can be obtained from another provider at a lower cost within a similar time frame. It also means that training may not be approved when the costs of the training are unreasonably high in comparison with the average costs of training other workers in similar occupations at other providers.

IDOL argues that the traditional MBA is the most cost effective program and results in the same degree. Claimant disagrees and believes that the EMBA differs in quality and content. Therefore, we are tasked with determining whether the EMBA truly differs in quality, content and results from the traditional MBA.

There are no published cases in Idaho addressing the various provisions under the TAA. Therefore, we look to other jurisdictions for guidance. There are a few decisions addressing whether a claimant is entitled to a specific type of training. However, we can locate no published decisions addressing a conflict between two available training programs.

Courts addressing requests for training authorization have consistently noted that state agencies, such as IDOL, are under a mandate to allocate training dollars in a manner that the greatest number of workers will derive the greatest benefit for the lowest cost. Wilder v. Employment Security Commission of North Carolina, 618 S.E.2d 863 (2005), Nevarre v. Unemployment Compensation Board of Review, 675 A.2d 361 (1996). Consequently, the needs of the many will often outweigh the needs of the few. Further, because of the variation in the skills of workers and the availability of jobs in labor market areas, state administering agencies

are accorded a great deal of discretion in making these decisions so long as they comply with the applicable Federal Regulations.

Here, Claimant is in the position of having many years of professional experience. Due to this experience, Claimant is eligible for a program geared specifically towards executives obtaining their MBA degree. Even though the traditional and executive MBA achieve the same degree, Claimant argues that the class size, instructors, and networking with classmates are not available or differ significantly from the traditional MBA program. (Transcript, p. 15, ll. 3-13.) To support her contention, Claimant provided substantiating testimony from the Director of Executive Education and of the EMBA program, Cheryl Maille. According to Ms. Maille, the EMBA program is geared toward executives who already have over six years of experience. (Transcript, p. 26, ll. 10-13.) Further, EMBA differences include a smaller class size, classes are taught in a more integrated nature, and the instructors have the capacity to teach executives. (Transcript, p. 27, ll. 2-8; pp. 29-30, ll. 23-4; p. 34, l. 8.) Ms. Maille's testimony does not show that the subject matter of the two programs differ substantially, only the method of teaching differs. Ms. Maille acknowledged that the two programs result in the same degree, an MBA. This leads us to believe that although the structure of the two programs differs, the information taught, i.e. the content, is either the same or very similar to have the same end result.

We note that there may be some difference in the programs regarding quality. Certainly a smaller class size and more one-on-one counseling with professors would benefit any student. However, there is no indication that this program is sought or favored over a traditional MBA by the workforce. Ms. Maille was unable to provide specific employers who would require an EMBA over a traditional MBA. (Transcript pp. 37-38, ll. 21-1.). While she may speculate that employers would prefer a candidate to have an EMBA, without additional evidence for support,

DECISION AND ORDER - 6

we find this to be mere speculation. Therefore, while the MBA may offer a student an arguably higher quality classroom experience, there is no solid evidence that the quality is deemed so much higher as to be sought after in the workforce.

Therefore, while the process of obtaining an MBA might differ, there is not solid evidence that the EMBA substantially differs substantially in the content, quality and result. Instead, the EMBA appears to be a specialized program geared toward a specialized group of individuals instead of a substantially dissimilar program. Because of this, we are not persuaded that the EMBA program differs substantially in content or quality. Both parties agree that the end result is the same.

Claimant's desire to take the most specialized path to her career goal is laudable and her desire to attain the training that will guarantee her the highest possible wage within that career is reasonable. However, the TAA is a remedial program. The purpose of that program is to provide Claimant and similarly situated workers with the means of obtaining training to become employable again in suitable work. Claimant has not persuaded us that the programs are so dissimilar in the training they offer in Claimant's chosen career that they are not comparable in the context of the TAA criteria. The training provided by the executive MBA program may provide Claimant with a network of classmates that may result in higher paying jobs than would the training provided by the traditional MBA. However, there is no evidence in this record to suggest that the traditional MBA program would prepare Claimant for jobs that would not meet the suitability standard defined in 20 C.F.R. 617.22(a)(1)(i). Considering the purpose of TAA, we cannot discount the traditional MBA program simply because the worker desires to be in a program geared towards a specific group of individuals when the traditional MBA would fulfill the same retraining objective.

DECISION AND ORDER - 7

The language of 20 C.F.R. 617.22(a)(6)(ii) makes it clear that IDOL may not approve training at a higher cost when a lower cost program is available. Clearly, the traditional MBA program at BSU is the lowest cost program that offers Claimant the training she generally seeks. Although the loss of her employment qualified Claimant for assistance under TAA, the training Claimant selected had to meet all six of the criteria under 20 C.F.R. 617.22(a) before IDOL could authorize funding. Claimant is free to seek other means of funding training through the program of her choice, but because Claimant's choice of training does not satisfy the "lowest cost" requirement of 20 C.F.R. 617.22(a)(6), Claimant's request for support under TAA for the executive MBA cannot be approved.

CONCLUSION OF LAW

Claimant's request for training approval and allowances while in training under 20 C.F.R. 617.22 is denied, because it is not the lowest cost option for that training as required by 20 C.F.R. 617.22(a)(6).

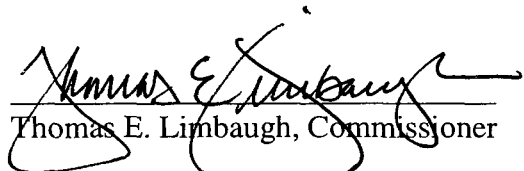
ORDER

Based on the foregoing analysis, the Decision of the Appeals Examiner is REVERSED. Claimant's request for training approval and allowances while in training under 20 C.F.R. 617.22 for the executive MBA is denied. This is a final order under Idaho Code § 72-1368(7).

DATED this 8 day of January 2009.

INDUSTRIAL COMMISSION

R.D. Maynard, Chairman

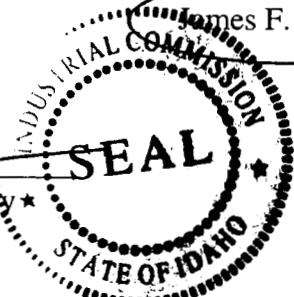


Thomas E. Limbaugh, Commissioner

James F. Kile

James F. Kile, Commissioner

ATTEST:
[Signature]
Assistant Commission Secretary



CERTIFICATE OF SERVICE

I hereby certify that on the 8 day of January, 2009 a true and correct copy of **Decision and Order** was served by regular United States mail upon each of the following:

RUTH A CREPS
1212 N 5TH
BOISE ID 83706

DEPUTY ATTORNEY GENERAL
IDAHO DEPARTMENT OF LABOR
STATE HOUSE MAIL
317 W MAIN STREET
BOISE ID 83735

cjh

[Signature]

RUTH A. CREPS, PRO SE

1212 N. 5th Street

Boise, Idaho 83702

(208) 890-1666

2009 JAN 22 P 2: 11
RECEIVED
INDUSTRIAL COMMISSION

IN THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

RUTH A. CREPS,

)

)

Claimant/Respondent,

)

)

vs.

)

IDOL # 8091-T-2008

)

NOTICE OF APPEAL

)

STATE OF IDAHO,

)

DEPARTMENT OF LABOR

)

Appellant.

)

)

)

To: The above named Appellant, Idaho Department of Labor (IDOL), and its attorneys, the Attorney General of the State of Idaho, Laurence G. Wasden, and the Clerk of the Idaho Industrial Commission.


Notice is hereby given that:

1. Claimant/Respondent, Ruth A. Creps, appeals against Appellant, IDOL, to the Idaho Supreme Court from the final Decision and Order of the Idaho Industrial Commission dated January 8, 2009, by Commissioner Thomas E. Limbaugh.
2. Creps appeal of the Decision and Order described in paragraph 1 to the Idaho Supreme Court is made pursuant to Rule 11(b) I.A.R.
3. Creps intends to raise the following issues on appeal:
 - a. The Decision and Order of the Idaho Industrial Commission should be vacated because the issue raised by IDOL and purportedly addressed by the Commission was moot at the time the Decision and Order was entered because IDOL certified that Creps met all the criteria for requested training reimbursement under the Trade Adjustment Assistance Act; and
 - b. The Idaho Industrial Commission erred by reversing the Appeals Examiner's determination that Creps met the criteria required to receive federal funding pursuant to the Trade Adjustment Assistance Act for retraining in the Executive MBA program at Boise State University.
4. Creps requests inclusion of the Idaho Industrial Commission's record provided by Rule 28, I.A.R.
5. Creps requests the transcript of the hearing held before the IDOL Appeals Examiner on September 25, 2008, that was provided to the Idaho Industrial Commission and formed the basis of its opinion. The Clerk of the Idaho Industrial Commission estimates that the production of the transcripts and record in this matter to be \$50.00.

6. Creps has paid the filing fee of \$86.00 and the estimated fee for the preparation of the transcripts and agency record in the amount of \$50.00 to the Clerk of the Idaho Industrial Commission.

7. The under signed Claimant/Respondent, Ruth A. Creps, certifies that service has been made on all parties required to be served pursuant to Rule 20 and the Attorney General of the State of Idaho pursuant to section 67-1401(1), Idaho Code.

DATED THIS 22nd day of January, 2009.



Ruth A. Creps, Pro Se

RUTH A. CREPS, PRO SE

1212 N. 5th Street

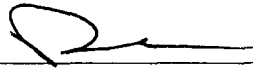
Boise, Idaho 83702

(208) 890-1666

State of Idaho

Ada County

I, Ruth A. Creps, do hereby swear or affirm that the statements made in the foregoing Notice of Appeal are true and correct to the best of my knowledge and belief.

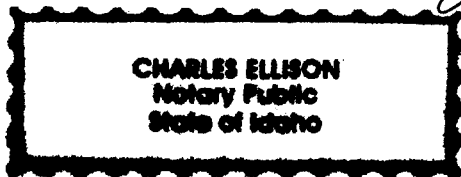


Ruth A. Creps, Pro Se

Subscribed and sworn to before me this 22nd day, January 2009.



Notary Public
State of Idaho
Ada County



My Commission Expires 5/1/11

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

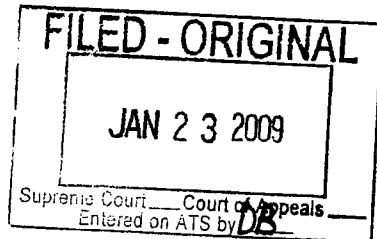
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IDAHO SUPREME COURT
COURT OF APPEALS

2009 JAN 23 AM 10:59

RUTH A. CREPS,)
)
Claimant/Appellant,)
)
vs.)
)
IDAHO DEPARTMENT OF LABOR,)
)
Respondent.)
_____)

SUPREME COURT NO. 36072

CERTIFICATE OF APPEAL



Appeal From: Industrial Commission,
R.D. Maynard, Chairman, presiding.

Case Number: IDOL #8091-T-2008

Order Appealed from: Decision and Order, filed January 8, 2009

Representative for Claimant: Ruth A Creps, Pro Se
1212 N 5th St.
Boise Idaho 83702

Representative for IDOL: Katherine Takasugi
Deputy Attorney General
Idaho Department of Labor
317 W Main St
Boise, Id 83735

Appealed By: Claimant/Appellant

Appealed Against: Idaho Department of Labor/Respondent

Notice of Appeal Filed: January 22, 2009

Appellate Fee Paid: \$86.00 (cash)

Transcript: Transcript has been ordered and
received from Dean Willis

Dated:

January 23, 2009

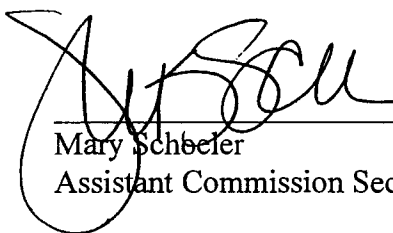
Mary Schoeler
Assistant Commission Secretary



CERTIFICATION

I, Mary Schoeler, the undersigned Assistant Commission Secretary of the Industrial Commission of the State of Idaho, hereby CERTIFY that the foregoing is a true and correct photocopy of the Notice of Appeal filed January 22, 2009; Decision and Order, filed January 8, 2009; and the whole thereof.

DATED: January 23, 2009


Mary Schoeler
Assistant Commission Secretary



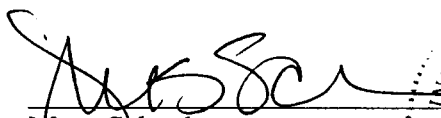
The seal is circular with a dotted border. The text "INDUSTRIAL COMMISSION" is written along the top inner edge, and "STATE OF IDAHO" is written along the bottom inner edge. Two small stars are positioned on the left and right sides of the seal. The word "SEAL" is printed in large, bold, capital letters in the center of the seal.

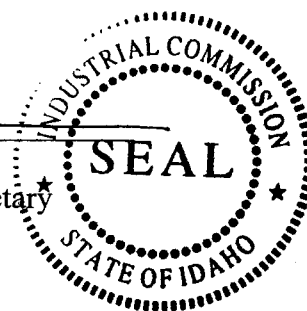
CERTIFICATION OF RECORD

I, Mary Schoeler, the undersigned Assistant Commission Secretary of the Industrial Commission, do hereby certify that the foregoing record contains true and correct copies of all pleadings, documents, and papers designated to be included in the Agency's Record on appeal by Rule 28(3) of the Idaho Appellate Rules and by the Notice of Appeal, pursuant to the provisions of Rule 28(b).

I further certify that all exhibits admitted in this proceeding are correctly listed in the List of Exhibits (i). Said exhibits will be lodged with the Supreme Court after the Record is settled.

DATED this 3 day of March 2009.


Mary Schoeler
Assistant Commission Secretary



BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

RUTH A. CREPS,)
)
 Claimant/Appellant,)
)
 vs.)
)
 IDAHO DEPARTMENT OF LABOR,)
)
 Respondent.)
 _____)

SUPREME COURT NO: 36072-2009

NOTICE OF COMPLETION

TO: STEPHEN W. KENYON, Clerk of the Courts; and
Ruth A. Creps, Pro Se, Claimant/Appellant; and
Katherine Takasugi for Idaho Department of Labor, Respondent.

YOU ARE HEREBY NOTIFIED that the Clerk's Record was completed on this date and,
pursuant to Rule 24(a) and Rule 27(a), Idaho Appellate Rules, copies of the same have been served
by regular U.S. mail upon each of the following:

For Claimant/Appellant:

Ruth A Creps, Pro Se
1212 N. 5th St
Boise, Idaho 83702

For Respondent:

Katherine Takasugi
Deputy Attorney General
Idaho Department of Labor
317 W. Main St.
Boise, Idaho 83735

YOU ARE FURTHER NOTIFIED that pursuant to Rule 29(a), Idaho Appellate Rules, all
parties have twenty-eight days from the date of this Notice in which to file objections to the
Agency's Record or Reporter's Transcript, including requests for corrections, additions or deletions.

In the event no objections to the Agency's Record or Reporter's Transcript are filed within the twenty-eight day period, the Agency's Record and Reporter's Transcript shall be deemed settled.

DATED this 3 day of March, 2009.


Mary Schoeler
Assistant Commission Secretary

