

67863-9

67863-9

No. 67863-9

Ammended
COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

JULIE RAYSBROOK,
Appellant,

v.

EMPLOYMENT SECURITY DEPARTMENT,
STATE OF WASHINGTON,
Respondent.

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2012 MAR -6 AM 10:41

BRIEF OF APPELLANT

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Mukilteo, WA 98275
425-280-7310

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A. INTRODUCTION

Ms. Raysbrook was granted Commissioner Approved Training (CAT) and Training Benefits (TB) for the Shoreline Community College nursing program for the period of September 20, 2009, through anticipated graduation date May 30, 2012. In April 2010, Ms. Raysbrook notified the Department via progress report that she changed to the Everett Community College nursing program. April 2011, Ms. Raysbrook submitted a formal request to amend her completion date to June 2013, and also requested CAT and TB to attend the Human Services Program at Western Washington University. CP 132, FF. This change of program request was denied because Ms. Raysbrook would be pursuing a baccalaureate degree.

On May 31, 2011 Ms. Raysbrook participated in an Administrative Hearing, whereby the Administrative Law Judge upheld the Employment Security Department's Decision. CP 134.

On June 22, 2011 Ms. Raysbrook petitioned the Commissioner for review. The Decision of Commissioner adopted the Office of Administrative Hearing's Finding of Fact and Conclusion of Law. CP 150.

On October 12, 2011 Judge Ellen J. Fair entered an order upholding the Commissioner's Decision. Judge Fair agreed there was ambiguity in the statute. In doing so, Judge Fair stated that the Employment Security Department (ESD) was interpreting the law narrowly and Ms. Raysbrook was interpreting the law broadly.

1. Commissioner Approved Training Benefits (CAT).

Ordinarily, a claimant must continue to look for work to receive unemployment benefits, and therefore anything that interferes with that search, such as school or training, disqualifies a claimant from benefits because of being "unavailable" for work. RCW 50.20.010(1)(c). The Employment Security Act, however, provides an exception: claimants may continue to receive unemployment benefits while attending training if the commissioner of the ESD approves the training:

No otherwise eligible individual shall be denied benefits for any week because the individual is in training with the approval of the commissioner, nor shall such individual be denied benefits with respect to any week in which the individual is satisfactorily progressing in a training program with the approval of the commissioner by reason of the application of RCW 50.20.010(1)(c), 50.20.080, or 50.22.020 (1) relating to availability for work and active search for work, or failure to apply for or refusal to accept suitable work. . . .

RCW 50.20.043. These are typically called “CAT benefits” for “Commissioner Approved Training” Benefits. The reference in this statute to RCW 50.20.010(1)(c) means that a person taking Commissioner Approved Training will not be denied benefits under section .010(1)(c), which requires that the person be “available for work in any trade, occupation, profession, or business for which he or she is reasonably fitted.” RCW 50.20.010(1)(c).

In granting approval to training programs, the ESD is to consider six factors:

(2) What factors will the department consider when reviewing my application? The department will consider the following factors:

- (a) Your plan for completion of the training;
- (b) The nature of the training facility and the quality of the training;
- (c) Whether the training relates to an occupation or skill for which there are, or are expected to be, reasonable employment opportunities in the labor markets in which you intend to seek work;
- (d) Whether an oversupply of qualified workers exists;
- (e) Whether you have the qualifications and aptitudes to successfully complete such training; and
- (f) Whether your employment prospects in occupations in which you have training or experience do not exist or have substantially diminished in the labor market to the extent that the department determines you will probably be unemployed

for a lengthy period. These diminished prospects could be the result of business or economic conditions in the area, or due to personal reasons such as your health, physical fitness, criminal background, or other circumstances of a similar nature.

WAC 192-200-020.

2. Training Benefits (TB).

Training benefits do *exactly the same thing as CAT benefits*, that is, provide unemployment benefits while someone is attending training, *but only after a claimant's regular benefits have been exhausted*. In other words, TB benefits extend unemployment benefits to a claimant *after* the claimant's regular period of eligibility *if* the claimant is enrolled in training. RCW 50.22.150.

The requirements for TB benefits are that the claimant

- a. be a dislocated worker;
- b. demonstrate "sufficient tenure" in a particular skill set;
- c. demonstrate that hiring in the prior occupation is in decline;
- d. develop a "develops an individual *training program that is submitted to the commissioner for approval*" within 60 days after the individual is notified of the requirements of TB benefits (usually, the day the claimant applies for benefits for the first time because it is on that day the

- claimant receives a booklet detailing all the various details of unemployment benefits);
- e. enter the approved training program within 90 days after the individual is notified of the requirements of TB benefits; and
 - f. enroll in “*training approved under this section*” on a full-time basis.

See RCW 50.22.150(1)(a)-(f).

In other words, CAT applicants *can* be dislocated workers, and TB applicants must be dislocated workers; CAT applicants must submit a “plan for completion of the training” and TB applicants must submit “an individual training program”; CAT applicants must show that hiring in their traditional occupation is “substantially diminished” and TB applicants must show their “occupation or skills sets” are “substantially based on declining occupation or skills sets”; and in both CAT and TB, the training must be “approved” by the Commissioner. The primary difference is that CAT benefits are available during one’s regular period of eligibility and TB benefits are available only *after* regular benefits have been exhausted. But CAT benefits can be applied for anytime during one’s regular benefit period; TB benefits, although they will

only *start after* the regular benefit period and after benefits are exhausted, *must be applied for and embarked upon prior to that time.*

B. ASSIGNMENTS OF ERROR

1. The Commissioner erred in adopting the ALJ's Conclusion of Law (CP 134) that Ms. Raysbrook's academic pursuits did not constitute "training" for the purposes of the applicable statute. CP 150.

2. The Commissioner erred in adopting the ALJ's Conclusion of Law (CP 140) that "Commissioner approved training does not include any course of education primarily intended to meet the requirements of a baccalaureate or higher degree, unless the training meets specific requirements for certification, licensing, or for specific skills necessary for the occupation" RCW 50.22.155(7)(d)(ii)(C). CP 152.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Should Ms. Raysbrook have received CAT and TB benefits while pursuing a baccalaureate degree, which is required to obtain a certification to become a certified counselor?

C. STATEMENT OF THE CASE

1. **Substantive Facts: Change in Training Program.**
 - a. **Ms. Raysbrook changed programs midway through training as a result of not being accepted into the nursing program.**

Ms. Raysbrook was granted Commissioner Approved Training (CAT) and Training Benefits (TB) for the Shoreline Community College nursing program for the period of September 20, 2009, through graduation May 30, 2012. In April 2010, Ms. Raysbrook notified the Department via progress report that she changed to the Everett Community College nursing program.

Ms. Raysbrook was not admitted into the nursing program and chose another educational pursuit. She notified the ESD April 2011. It is worth noting that the number of credits required to graduate from the nursing program at Everett Community College exceed the number of credits required to graduate from the Human Services Program at Western Washington University, although the

length of the programs are the same, and therefore the expected graduation dates are identical. CP 116.

- b. Ms. Raysbrook's new intended career is a certified counselor, which requires a certification from the Washington State Department of Health. The certification requires a baccalaureate degree in Washington.**

Ms. Raysbrook notified ESD she intended to enter the social services/counseling field. This field requires a certification. In order to obtain such a certification from the Washington State Department of Health, she is required to have a baccalaureate degree. CP 35,38, 70.

2. Procedural Facts

- a. The ESD decided Ms. Raysbrook was not eligible for Commissioner Approved Training or Training Benefits while she pursued a baccalaureate degree at Western Washington University.**

Employment Security Department (ESD) denied Ms. Raysbrook's request for Modification of Training program in April 2011, stating "This academic training program is not necessary to meet specific requirements for certification, licensing, or specific

skills for an occupation, and/or is the beginning of a course of education primarily intended to meet the requirements of a baccalaureate or higher degree". CP 63.

Ms. Raysbrook appealed the decision April 20, 2011 stating:

1. ...your denial cites WAC 192-270-050(2), *'the academic training outlined in my application is not needed to meet a requirement for certification, licensing or provide specific skills necessary for an occupation.* CP 70.

ESD's denial of Ms. Raysbrook's initial appeal stated:

1. WAC 192-270-050(2) requires the department to consider if academic training is needed to meet specific requirements for certification, licensing, or specific skills necessary for the occupation. The academic training outlined in your application is not needed to meet a requirement for certification, licensing, or provide specific skills necessary for an occupation. CP 90.
2. Since the training you are requesting has not been determined to be specifically required for certification, licensing, or for providing specific skills for a new occupation, training benefits are denied, and your request to modify your training plan is not approved. CP 91.

ALJ Lauren Erickson made the following pertinent finding of fact:

1. (3). Commissioner approved training does not include any course of education primarily intended to meet the requirements of a baccalaureate or higher degree, unless the training meets specific

requirements for certification, licensing, or for specific skills necessary for the occupation. 4. ...the undersigned concludes the claimant has not been accepted into the nursing program and will instead attend college in order to pursue her BA degree in human services. Such a program does not fall within the type of training allowed by the commissioner approved training program. The claimant is therefore not eligible to receive commissioner approved training. CP 134.

2. ...'training program' does not include any course of education primarily intended to meet the requirements of a baccalaureate or higher degree, unless the training meets specific requirements for certification, licensing, or for specific skills necessary for the occupation. 16...the undersigned concludes the claimant...will instead attend college in order to pursue her BA degree in human services. Such a program does not fall within the type of training allowed by the training benefits program. The claimant is therefore not eligible to receive training benefits. CP 140.

Ms. Raysbrook filed a Petition for Review, stating in this appeal, "In order to receive a certified counselor license (a credential [certification] given by the Washington State Department of Health), I need to have a **BA** in a counseling related field (**Human Services** meets this criteria)." CP 146.

- b. On appeal, the Commissioner adopted an ALJ's conclusion that Ms. Raysbrook was not eligible for Commissioner Approved Training or Training Benefits while pursuing a baccalaureate degree.

The Commissioner adopted the ALJ's Findings and Conclusions and made the following pertinent conclusions:

1. WAC 192-200-010(2) excludes from the term training 'a course of education primarily intended to meet the requirements of a baccalaureate or higher degree'. CP 151. The commissioner also states, "Because she is pursuing a baccalaureate degree, claimant's academic pursuits do not constitute 'training' for purposes of the applicable statutes. See WAC 192-200-010(2). CP 152.
2. Claimant's proposed program does not meet the criteria of RCW 50.22.155(7)(d)(i) or (ii). Claimant's proposed program is simply a major study within the broader academic scheme which is intended to confer a baccalaureate degree and it does not meet specific requirements for certification or licensing in a vocational field, nor does it provide specific skills for an occupation. CP 154.

D. ARGUMENT

The Employment Security Act's Training Benefits program allows a claimant to receive unemployment benefits if they are in a "training program", as defined by RCW 50.22.155. The statute states that a "Training program" does not include any course of education primarily intended to meet the requirements of a baccalaureate or higher degree, **unless the training meets**

specific requirements for certification, licensing, or for specific skills necessary for the occupation.” RCW

50.22.155(7)(d)(ii)(C). Ms. Raysbrook’s program meets this exception. Exemption statutes require liberal construction so their underlying intent and purpose may be given effect. In re Elliott, 74 Wn.2d 600, 620, 446 P.2d 347 (1968), (citing N. Sav. & Loan Ass’n v. Kneisley, 193 Wash. 372, 76 P.2d 297 (1938)).

1. MS RAYSBROOK SHOULD HAVE RECEIVED UNEMPLOYMENT BENEFITS BECAUSE HER PURSUIT OF A BACHELOR’S DEGREE IN HUMAN SERVICES MEETS SPECIFIC REQUIREMENTS FOR CERTIFICATION AS A CERTIFIED COUNSELOR.

- a. Ms. Raysbrook intends to become a *certified counselor*, certified by the Washington State Department of Health. The Washington State Department of Health states that a *prerequisite to certification as a counselor* is having “a bachelor’s degree in a counseling related field.”**

Ms. Raysbrook’s pursuit of a bachelor’s degree in Human Services “meets specific requirements for certification” as a certified counselor. Therefore, her Human Services program at Western Washington University falls within the statutory definition of a “training program” and she should have been found eligible for Commissioner Approved Training and Training Benefits.

Further, regulations anticipate this exception. "Academic" training can be approved for training benefits under ESD regulations:

(4) Can academic training be approved? An academic training course may be approved if the conditions of subsections (1) and (2) of this section are met, and ***the training meets specific requirements for certification, licensing, or specific skills necessary for the occupation.***

WAC 192-200-020(4) (Initial bold in original; italics added for emphasis).

b. The Commissioner's Decision misinterpreted and misapplied the law regarding Commissioner Approved Training and Training Benefits.

The Commissioner's Decision here relies upon RCW 50.22.155 in stating that Ms. Raysbrook is excluded from Training Benefits, but in doing so the decision misreads the statute by stating that Ms. Raysbrook's "proposed program is simply a major study within the broader academic scheme which is intended to confer a baccalaureate degree ***and it does not meet specific requirements for certification or licensing in a vocational field, nor does it provide specific skills for an occupation.***" (CP 154)

This portion of the Commissioner's Decision is incorrect on two grounds: first, the proposed program DOES met specific requirements for certification, as demonstrated above, and second, the State's (.155) does not confine the certification requirements to "a vocational field." And even if it did there is no authority for excluding work as a "certified counselor" from being work in a "vocational field". The Commissioner's Decision recognizes that "Training Benefits" are not confined solely to vocational training but may include academic training, as the regulations above plainly state.

To the extent that .155 is ambiguous (Burton v. Lehman, 153 Wn.2d 416, 423, 103, P.3d 1230, 2005) ambiguity should be construed in favor of the claimant under liberal interpretation. RCW 50.01.010 indicates

This title shall be liberally construed for the purpose of reducing involuntary unemployment and the suffering caused thereby to the minimum.

Therefore, the Commissioner's Decision misinterpreted and *misapplied the law and did not utilize liberal construction of the statute regarding CAT and TB* and the decision should be reversed under the Administrative Procedure Act.

2. ATTORNEY FEES AND COSTS IN THIS CASE ARE MANDATED BY STATUTE WHEN A COMMISSIONER'S ORDER IS REVERSED ON JUDICIAL REVIEW.

A claimant who succeeds in convincing a court to reverse a Commissioner's Order is allowed reasonable attorney fees and costs as mandated by statute:

It shall be unlawful for any attorney engaged in any appeal to the courts on behalf of an individual involving the individual's application for initial determination, or claim for waiting period credit, or claim for benefits to charge or receive any fee therein in excess of *a reasonable fee to be fixed by the superior court in respect to the services performed in connection with the appeal taken thereto and to be fixed by the supreme court or the court of appeals in the event of appellate review, and if the decision of the commissioner shall be reversed* or modified, such fee and the costs shall be payable out of the unemployment compensation administration fund. *In the allowance of fees the court shall give consideration to the provisions of this title in respect to fees pertaining to proceedings involving an individual's application for initial determination, claim for waiting period credit, or claim for benefits.* In other respects the practice in civil cases shall apply.

RCW 50.32.160 (emphasis added). The fees and costs contemplated in this statute are stated in mandatory terms: "such fee and the costs *shall* be payable out of the unemployment compensation administration fund." *Id.*

Therefore, pursuant to this statute and RAP 18.1, appellant requests that attorney fees and costs be awarded upon reversal of the Commissioner's Order in this case.

E. CONCLUSION

For the reasons stated above, Julie Raysbrook respectfully requests that this court reverse the Commissioner's Decision in this case because her training program meets specific requirements for certification. Her Human Services program at Western Washington University falls within the statutory definition of a "training program" ..

Petitioner also requests that reasonable attorney fees be awarded in an amount to be determined upon filing of a cost bill subsequent to a decision in this matter and under authority of RCW 50.32.160 that mandates attorney fees and costs be awarded upon reversal or modification of a Commissioner's Order.

Dated this 5th day of March, 2012

Respectfully submitted,



Julie Raysbrook
Pro Se

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APPENDIX A
STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE EMPLOYMENT SECURITY DEPARTMENT

IN THE MATTER OF:

Julie A. Raysbrook

Claimant

DOCKET NO: 02-2011-12870

INITIAL ORDER

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2012 MAR -6 AM 10:41

ID: [REDACTED] 0388 1

BYE: 09/25/2010

UIO: 770

Hearing: This matter came before Administrative Law Judge Lauren M. Erickson on May 31, 2011 at Seattle, Washington after due and proper notice to all interested parties.

Persons Present (by telephone): The claimant-appellant, Julie A. Raysbrook.

STATEMENT OF THE CASE:

The claimant filed an appeal on April 21, 2011 from a Decision of the Employment Security Department dated April 14, 2011. At issue in the appeal is whether the claimant's application for training has been properly approved or denied by the Commissioner pursuant to RCW 50.20.043 beginning April 10, 2011 through June 29, 2013.

Having fully considered the entire record, the undersigned Administrative Law Judge enters the following Findings of Fact, Conclusions of Law and Initial Order:

FINDINGS OF FACT:

1. The claimant was originally accepted for commissioner approved training for the Shoreline Community College nursing program to cover the period September 20, 2009 through May 30, 2012.
2. The claimant subsequently changed to the Everett Community College nursing program, which would have extended her completion date by two quarters, without formal modification approval from the Department; however, the claimant noted the change on a progress report on April 13, 2010.
3. This progress report apparently was accepted by the Department.

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4. In April 2011 the claimant submitted a formal request to amend her completion date to June 2013. In this request the claimant addressed her request to attend the Everett Community College nursing program but also requested training benefits to obtain a bachelor of arts degree in human services from Western Washington University.

5. The claimant has received notification that she was not accepted to the nursing program and will instead attend Western Washington to complete the above described degree.

6. During the period of time covered by the claimant's approved commissioner approved raining program, there were quarters wherein she was unable to attend the school on a full time basis.

7. For one of those quarters, the claimant was unable to enroll in a sufficient number of credit due to the school schedule. During two other quarters, the claimant was unable to attend school on a full time basis due to medical issues.

CONCLUSIONS OF LAW:

1. The provisions of RCW 50.20.043 and Chapter 192-200 WAC apply. Under certain circumstances, a person attending a vocational school may be relieved of the obligation under RCW 50.20.010(1)(c) to be available for and actively seeking work, and the obligation under RCW 50.20.080 to accept an offer of suitable work. To be relieved of these obligations, the person must submit an application to the department for Commissioner Approved Training (CAT).

2. WAC 192-200-020 provides in part that the department will consider the following factors when reviewing your application for Commissioner Approved Training:

- a. Your plan for completion of training;
- b. The nature of the training facility and the quality of the training;
- c. Whether the training relates to an occupation or skill for which there are, or are expected to be, reasonable employment opportunities in the labor markets in which you intend to seek work;
- d. Whether an oversupply of qualified workers exists;
- e. Whether you have the qualifications and aptitudes to successfully complete such program of instruction; and
- f. Whether your employment prospects in occupations in which you have training and experience do not exist or have substantially diminished in the labor market to the

extent that the department determines you will probably be unemployed for a lengthy period. These diminished prospects could be the result of business or economic conditions in the area, or due to personal reasons such as your health, physical stature, criminal background, or other circumstances of a similar nature.

3. Commissioner approved training does not include any course of education primarily intended to meet the requirements of a baccalaureate or higher degree, unless the training meets specific requirements for certification, licensing, or for specific skills necessary for the occupation.

4. In applying the law to the facts of the case herein, the undersigned concludes the claimant has not been accepted into the nursing program and will instead attend college in order to pursue her BA degree in human services. Such a program does not fall within the type of training allowed by the commissioner approved training program. The claimant is therefore not eligible to receive commissioner approved training.

Now therefore it is ORDERED:

The Decision of the Employment Security Department under appeal is **AFFIRMED**.

The claimant's application for training has been properly denied by the Commissioner pursuant to RCW 50.20.043.

Dated and Mailed on June 02, 2011 at Seattle, Washington.



Lauren M. Erickson
Administrative Law Judge
Office of Administrative Hearings
600 University Street, Suite 1500
Seattle, WA 98101-3126

Certificate of Service

I certify that I mailed a copy of this order to the within-named interested parties at their respective addresses postage prepaid on the date stated herein. _____

PETITION FOR REVIEW RIGHTS

This Order is final unless a written Petition for Review is addressed and mailed to:

**Agency Records Center
PO Box 9555
Olympia, Washington 98507-9555**

and postmarked on or before **July 5, 2011**. All argument in support of the Petition for Review must be attached to and submitted with the Petition for Review. The Petition for Review, including attachments, may not exceed five (5) pages. Any pages in excess of five (5) pages will not be considered and will be returned to the petitioner. *The docket number from the Initial Order of the Office of Administrative Hearings must be included on the Petition for Review.* Do not file your Petition for Review by Facsimile (FAX). Do not mail your Petition to any location other than the Agency Records Center.

LME:lme

Mailed to the following:

Julie A Raysbrook
17615 84th Ave NE
Arlington, WA 98223-4050

Claimant-Appellant

**STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE EMPLOYMENT SECURITY DEPARTMENT**

IN THE MATTER OF:

Julie A. Raysbrook

Claimant

DOCKET NO: 02-2011-12871

INITIAL ORDER

ID: [REDACTED] 0388 1

BYE: 09/25/2010

UIO: 770

Hearing: This matter came before Administrative Law Judge Lauren M. Erickson on May 31, 2011 at Seattle, Washington after due and proper notice to all interested parties.

Persons Present (by telephone): The claimant-appellant, Julie A. Raysbrook.

STATEMENT OF THE CASE:

The claimant filed an appeal on April 21, 2011 from a Decision of the Employment Security Department dated April 14, 2011. At issue in the appeal is whether the claimant is eligible to receive training benefits pursuant to RCW 50.22.155.

Having fully considered the entire record, the undersigned Administrative Law Judge enters the following Findings of Fact, Conclusions of Law and Initial Order:

FINDINGS OF FACT:

1. The claimant was originally accepted for training benefits for the Shoreline Community College nursing program to cover the period September 20, 2009 through May 30, 2012.
2. The claimant subsequently changed to the Everett Community College nursing program, which would have extended her completion date by two quarters, without formal modification approval from the Department; however, the claimant noted the change on a progress report on April 13, 2010.
3. This progress report apparently was accepted by the Department.
4. In April 2011 the claimant submitted a formal request to amend her completion date to June 2013. In this request the claimant addressed her request to attend the Everett Community

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College nursing program but also requested training benefits to obtain a bachelor of arts degree in human services from Western Washington University.

5. The claimant has received notification that she was not accepted to the nursing program and will instead attend Western Washington to complete the above described degree.

6. During the period of time covered by the claimant's approved training benefit program, there were quarters wherein she was unable to attend the school on a full time basis.

7. For one of those quarters, the claimant was unable to enroll in a sufficient number of credit due to the school schedule. During two other quarters, the claimant was unable to attend school on a full time basis due to medical issues.

CONCLUSIONS OF LAW:

1. For claims effective prior to April 5, 2009, RCW 50.20.099, RCW 50.22.130, RCW 50.22.150, and Chapter 192-270-WAC apply.

2. The provisions of RCW 50.22.150 describe the eligibility requirements for training benefits. In general, depending upon the availability of funds, training benefits are available to an individual who

- a. has exhausted unemployment benefits;
- b. is a dislocated worker;
- c. has sufficient tenure in an occupation or work with a particular skill set, as shown through a work history;
- d. is in need of job-related training in order to find suitable employment in his or her labor market. The demand for the individual's occupation or skill sets must be substantially based on declining occupation or skill sets identified in the local labor market areas by the local workforce development councils in cooperation with the employment security department and the labor market division.

3. Those individuals who have exhausted unemployment benefits and have a base year employment in the aerospace industry, the forest products industry and the fishing industry, may receive training benefits without regard to the tenure requirements.

4. Training benefits are paid as follows:

- a. for individuals in 2 above, the total training benefit amount shall be 52 times the individual's weekly benefit amount. However, this amount shall be reduced by the total amount of regular benefits and extended benefits paid, or deemed to be paid in a benefit year;
- b. for individuals in 3 above, who filed claims before June 30, 2002, the total training benefit amount shall be 74 times the individual's weekly benefit amount. However, this

amount shall be reduced by the total amount of regular benefits and extended benefits paid or deemed to be paid in a benefit year; and

c. for those individuals eligible under 2 and 3 above for claims filed after June 30, 2002 but before January 5, 2003, the total training benefits amount shall be 74 times the individual's weekly benefit amount.

However, this amount shall be reduced by the total amount of regular benefits and extended benefits paid or deemed to be paid in a benefit year. The weekly benefit amount shall be the same as the regular weekly amount payable during the applicable benefit year and be paid under the same terms and conditions of regular benefits. Training benefits shall be paid before extended benefits but not before any similar federally funded program. Training benefits are not paid for weeks more than two years beyond the end of the benefit year of the regular claim.

5. The requirement of exhausting regular benefits does not apply to those individuals whose benefit year ends before his or her training benefits are exhausted and the individual is eligible for a new benefit year. In these cases, the individual may remain on the original claim or file a new claim.

6. For claims effective on or after April 5, 2009, RCW 50.22.155 applies.

7. Subject to availability of funds, training benefits are available for an individual who

- a. is eligible for or has exhausted entitlement to unemployment compensation benefits when the individual is a dislocated worker as defined in RCW 50.04.075 and,
- b. after assessment of the individual's labor market, occupation, or skills, is determined to need job-related training to find suitable employment in the individual's labor market.
- c. The assessment of demand for the individual's occupation or skill sets must be substantially based on declining occupation or skill sets and high-demand occupations identified in local labor market areas by the local workforce development councils in cooperation with the employment security department and its labor market information division.

8. For claims with an effective date on or after September 7, 2009, training benefits are paid, subject to availability of funds to when and individual:

- a. earned an average hourly wage in the individual's base year that is less than one hundred thirty percent of the state minimum wage, and after assessment, it is determined that the individual's earning potential will be enhanced through vocational training. The individual's average hourly wage is calculated by dividing the total wages paid by the total hours worked in the individual's base year;
- b. served in the United States military or the Washington national guard during the twelve-month period prior to the application date, was honorably discharged from military service or the Washington national guard and, after assessment, is determined to need job-related training to find suitable employment in the individual's labor market;

- c. is currently serving in the Washington national guard and, after assessment, is determined to need job-related training to find suitable employment in the individual's labor market; or
 - d. is disabled due to an injury or illness and, after assessment, is determined to be unable to return to his or her previous occupation and to need job-related training to find suitable employment in the individual's labor market.
9. The individual must develop an individual training program that is submitted to the commissioner for approval within ninety days after the individual is notified by the employment security department of the requirements of this section;
10. The individual must enter the approved training program by one hundred twenty days after the date of the notification, unless the employment security department determines that the training is not available during the one hundred twenty days, in which case the individual enters training as soon as it is available;
11. The department may waive the deadlines established under this subsection for reasons deemed by the commissioner to be good cause.
12. The individual must be enrolled in training approved under this section on a full-time basis as determined by the educational institution, except that less than full-time training may be approved when the individual has a physical, mental, or emotional disability that precludes enrollment on a full-time basis.
13. The individual must make satisfactory progress in the training as defined by the commissioner and certified by the educational institution.
14. An individual is not eligible for training benefits under this section if he or she
- a. Is a standby claimant who expects recall to his or her regular employer; or
 - b. Has a definite recall date that is within six months of the date he or she is laid off.
15. *Training program means*
- a. an education program determined to be necessary as a prerequisite to vocational training after counseling at the educational institution in which the individual enrolls under his or her approved training program; or
 - b. a vocational training program at an educational institution that is targeted to training for a high-demand occupation is likely to enhance the individual's marketable skills and earning power; and
 - c. meets the criteria for performance developed by the workforce training and education coordinating board for the purpose of determining those training programs eligible for funding under Title I of P.L. 105-220.

"Training program" does not include any course of education primarily intended to meet the requirements of a baccalaureate or higher degree, unless the training meets specific requirements for certification, licensing, or for specific skills necessary for the occupation.

16. In applying the law to the facts of the case herein, the undersigned concludes the claimant has not been accepted into the nursing program and will instead attend college in order to pursue her BA degree in human services. Such a program does not fall within the type of training allowed by the training benefits program. The claimant is therefore not eligible to receive training benefits.

Now therefore it is ORDERED:

The Decision of the Employment Security Department under appeal is **AFFIRMED**.

The claimant is not eligible to receive training benefits pursuant to RCW 50.22.155.

Dated and Mailed on June 02, 2011 at Seattle, Washington.



Lauren M. Erickson
Administrative Law Judge
Office of Administrative Hearings
600 University Street, Suite 1500
Seattle, WA 98101-3126

Certificate of Service

I certify that I mailed a copy of this order to the within-named interested parties at their respective addresses postage prepaid on the date stated herein. _____

PETITION FOR REVIEW RIGHTS

This Order is final unless a written Petition for Review is addressed and mailed to:

**Agency Records Center
PO Box 9555
Olympia, Washington 98507-9555**

and postmarked on or before July 5, 2011. All argument in support of the Petition for Review must be attached to and submitted with the Petition for Review. The Petition for Review, including

INITIAL ORDER - 5

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attachments, may not exceed five (5) pages. Any pages in excess of five (5) pages will not be considered and will be returned to the petitioner. *The docket number from the Initial Order of the Office of Administrative Hearings must be included on the Petition for Review.* Do not file your Petition for Review by Facsimile (FAX). Do not mail your Petition to any location other than the Agency Records Center.

LME:lme

Mailed to the following:

Julie A Raysbrook
17615 84th Ave NE
Arlington, WA 98223-4050

Claimant-Appellant

Navy Personnel Command
Pers31 UCX Liaison Ofc
5720 Integrity Dr
Millington, TN 38054-5028

Employer

Employment Security Department
Additional Training Ben/Oblig Unit
PO Box 9046
Olympia, WA 98507-9046

Department

King County TeleCenter
Mark Lambert/TB Unit
PO Box 47076
Seattle, WA 98146-7076

Department

CERTIFICATE OF SERVICE

I certify that I mailed a copy of this decision to the within named interested parties at their respective addresses postage prepaid on July 15, 2011.

APPENDIX B

Representative, Commissioner's Review Office,
Employment Security Department

UIO: 770
BYE: 09/25/2010

BEFORE THE COMMISSIONER OF
THE EMPLOYMENT SECURITY DEPARTMENT
OF THE STATE OF WASHINGTON

Review Nos. 2011-2525 & 2011-2526

In re:

JULIE A. RAYSBROOK
SSA No. [REDACTED] 0388

Docket Nos. 02-2011-12870 &
02-2011-12871

DECISION OF COMMISSIONER

FILED
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STATE OF WASHINGTON
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On June 22, 2011, JULIE A. RAYSBROOK petitioned the Commissioner for review of Initial Orders issued by the Office of Administrative Hearings on June 2, 2011. Pursuant to chapter 192-04 WAC these matters have been delegated by the Commissioner to the Commissioner's Review Office. Having reviewed the entire record and having given due regard to the findings of the administrative law judge pursuant to RCW 34.05.464(4), we adopt the Office of Administrative Hearings' Findings of Fact and Conclusions of Law, and enter the following.

ADDITIONAL FINDING OF FACT

I

Graduation from Western Washington University requires 180 credits. Exhibit 6, page 1. Of the 180 required credits, students majoring in Human Services are required to take 76 credits withing the major. Exhibit 6, page 2.

ADDITIONAL CONCLUSIONS OF LAW

I

There is no vested right to unemployment compensation. Gluck v. ESD, 84 Wn.2d 316, 318, 525 P.2d 768 (1974). A claimant for unemployment benefits bears the burden of establishing entitlement to them. Jacobs v. Office of Unemp. Comp. & Placement, 27 Wn.2d 641, 651, 179 P.2d 707 (1947).

II

The availability requirements of RCW 50.20.010(1)(c) may be waived when a claimant is enrolled in a Commissioner Approved Training program. RCW 50.20.043. In determining

In 1971, Washington state enacted RCW 50.20.043 on the federal model. Initial regulations relating to RCW 50.20.043 evidenced a recognition of the federal emphasis on vocational rather than academic training.

In April 1973 we held that a two-year community college course in Management was a "short-term vocationally-directed academic course" within the contemplation of the Commentary, supra, so that benefits could not be denied pursuant to RCW 50.20.010(1)(c), even though the period at issue coincided with the beginning of the course. In re Curtiss, Empl. Sec. Comm'r Dec. 970 (1973).

The Department's first regulation clarifying the statute provided that "training" meant vocational or technical training or retraining, but did not include basic education or training intended to prepare individuals for employment in occupations generally classified as professional or which required a baccalaureate or higher degree from institutions of higher education. See Order 2-73, WAC 192-12-180 (11-15-73).

In 1989, the state regulations were amended to provide that the Department could determine that a course of education could be "training" for purposes of RCW 50.20.043, see Order 2-89, WAC 192-12-180 (01-18-89), and that an academic training course could be approved if it was less than six months in duration. WAC 192-12-182.

In 1993 the regulations were amended to provide that "training" means a course of education with the primary purpose of training the applicant in skills that would allow him or her to obtain employment, and that the term did not contemplate beginning a course of education primarily intended to meet the requirements of a baccalaureate or higher degree. See Order 93-16-053, WAC 192-12-180 (08/29/93). Additionally, the "less than six month" requirement applicable to academic training was excised. WAC 192-12-182.

V

Applying the foregoing statutes and legislative history to the claimant, we conclude Commissioner Approved Training was properly denied. Because she is pursuing a baccalaureate degree, claimant's academic pursuits do not constitute "training" for purposes of the applicable statute. See WAC 192-200-010(2). We realize, as claimant points out in her petition, that there are circumstances under which academic courses can be approved, but academic courses cannot be approved where, as here, they do not constitute "training" within the contemplation of RCW 50.20.043. Note the WAC 192-200-020(4) exceptions to the rule that "training" does not include a course of education primarily intended to meet the requirements of a baccalaureate or higher degree.

VI

Claimant argues in her petition that the Human Services program at Western Washington University provides specific training necessary for her desired occupation. Initially we point out that simply because an occupation is "in Demand," that it does not necessarily follow the training program needed to attain employment in said occupation qualifies for Commissioner Approved Training. Where, as here, an academic program may provide claimant with the necessary skills for a desired field, claimant is nevertheless pursuing an academic degree. As such, her schooling does not not qualify for Commissioner Approved Training. This is highlighted in the materials submitted by claimant regarding the details of her desired program. Graduation from Western Washington University requires completion of 180 credits. Exhibit 6, page 1. Claimant's desired major in Human Services requires just 76 credits, less than half of those required to graduate. Exhibit 6, page 2. Even assuming all of claimant's prior credits transferred, she would still be required to take nearly a year of course work beyond her course of study. Under these circumstances, we conclude that claimant's proposed academic program is primarily intended to meet the requirements of a baccalaureate degree, and does not constitute "training" within the contemplation of RCW 50.20.043. As such, Commissioner Approved Training has been properly denied.

VII

Finally, we address claimant's application for Training Benefits pursuant to RCW 50.22.155. Among other requirements, a claimant must exhaust regular benefits and be enrolled in a Commissioner approved "training program" to receive Training Benefits. "Training program" in RCW 50.22.155(7)(d) is defined as:

- (i) An education program determined to be necessary as a prerequisite to vocational training after counseling at the educational institution in which the individual enrolls under his or her approved training program; or
- (ii) A vocational training program at an educational institution that:
 - (A) Is targeted to training for a high-demand occupation;
 - (B) Is likely to enhance the individual's marketable skills and earning power; and
 - (C) Meets the criteria for performance developed by the workforce training and education coordinating board for the purpose of determining those training programs eligible for funding under Title I of P.L. 105-220."Training program" does not include any course of education primarily intended to meet the requirements of a baccalaureate or higher degree, unless the training meets specific requirements for certification, licensing, or for specific skills necessary for the occupation.

RECONSIDERATION

Pursuant to RCW 34.05.470 and WAC 192-04-190 you have ten (10) days from the mailing and/or delivery date of this decision/order, whichever is earlier, to file a petition for reconsideration. No matter will be reconsidered unless it clearly appears from the face of the petition for reconsideration and the arguments in support thereof that (a) there is obvious material, clerical error in the decision/order or (b) the petitioner, through no fault of his or her own, has been denied a reasonable opportunity to present argument or respond to argument pursuant WAC 192-04-170. Any request for reconsideration shall be deemed to be denied if the Commissioner's Review Office takes no action within twenty days from the date the petition for reconsideration is filed. A petition for reconsideration together with any argument in support thereof should be filed by mailing or delivering it directly to the Commissioner's Review Office, Employment Security Department, 212 Maple Park Drive, Post Office Box 9555, Olympia, Washington 98507-9555, and to all other parties of record and their representatives. The filing of a petition for reconsideration is not a prerequisite for filing a judicial appeal.

JUDICIAL APPEAL

If you are a party aggrieved by the attached Commissioner's decision/order, your attention is directed to RCW 34.05.510 through RCW 34.05.598, which provide that further appeal may be taken to the superior court within thirty (30) days from the date of mailing as shown on the attached decision/order. If no such judicial appeal is filed, the attached decision/order will become final.

If you choose to file a judicial appeal, you must both:

- a. Timely file your judicial appeal directly with the superior court of the county of your residence or Thurston County. If you are not a Washington state resident, you must file your judicial appeal with the superior court of Thurston County. See RCW 34.05.514. (The Department does not furnish judicial appeal forms.) AND
- b. Serve a copy of your judicial appeal by mail or personal service within the 30-day judicial appeal period on the Commissioner of the Employment Security Department, the Office of the Attorney General and all parties of record.

The copy of your judicial appeal you serve on the Commissioner of the Employment Security Department should be served on or mailed to: Commissioner, Employment Security Department, Attention: Agency Records Center Manager, 212 Maple Park, Post Office Box 9555, Olympia, WA 98507-9555. To properly serve by mail, the copy of your judicial appeal must be received by the Employment Security Department on or before the 30th day of the appeal period. See RCW 34.05.542(4) and WAC 192-04-210. The copy of your judicial appeal you serve on the Office of the Attorney General should be served on or mailed to the Office of the Attorney General, Licensing and Administrative Law Division, 1125 Washington Street SE, Post Office Box 40110, Olympia, WA 98504-0110.