CHAPTER 14
FEDERAL PROGRAMS

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2.14.1 UNEMPLOYMENT COMPENSATION FOR EX-SERVICE MEMBERS

Unemployment compensation for ex-service members (UCX) is covered under a federal statutory scheme.[1] The definition of Federal Service, as applied to UCX, means that the claimant must have (1) been in active service in the armed services[2] or the Commissioned Corps of the National Oceanic and Atmospheric Administration, (2) been discharged or released under honorable conditions,[3] and (3) completed the first full term of duty. An ex-service member who did not complete the first full term of duty may still be eligible under certain conditions.[4] Active service in a reserve status is only included in the definition of Federal Service if the individual was in active service for a continuous period of 180 days or more.[5]

Compensation is funded by the United States[6] but is paid to individual claimants by the respective states acting as an agent for the United States.[7] Base periods and the benefit year are defined by each state in accordance with the respective state laws.[8]

FORM DD-214

On separation from the military, an individual is provided with Form DD-214, the Certificate of Release or Discharge from Active Service. The form includes the information referenced in 20 C.F.R. § 614.21: the date of entry into the service and the date of separation, whether the individual completed his or her first full term of duty, and whether the individual was released

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[1] Federal unemployment compensation is covered, generally, by 5 U.S.C. Ch. 85; the provisions which apply specifically to ex-service members are at 5 U.S.C. §§ 8521 – 8525.

[2] "Armed services" means the Army, Navy, Air Force, Marines, and Coast Guard (5 U.S.C. § 2102 (2)).

[3] See Appeal Board No. 553628 (claimant was to be tried by a court martial but was released from service in lieu of the trial; he was not eligible to receive UCX benefits).

[4] Pursuant to 5 U.S.C. § 8521 (a) (1) (B) (ii), claimants are still eligible in these circumstances when released or discharged (1) for the convenience of the Government under an early release program, (2) because of medical disqualification, pregnancy, parenthood, or any service-incurred injury or disability, (3) because of hardship (including pursuant to a sole survivorship discharge, as that term is defined in 10 U.S.C. § 1174 (i)), or (4) because of personality disorders or inaptitude but only if the service was continuous for 365 days or more.

[5] The definition of continuous period was amended in 2016. Previously a claimant had to have service for a continuous period of 90 days and earlier cases may reflect that time period.

[6] 5 U.S.C. § 8505

[7] 5 U.S.C. § 8502 (a) (1)

[8] 5 U.S.C. § 8501 (5), (8)

under honorable conditions. The information included on the DD-214 is final and must be accepted.[9]

If a claimant whose active service was in reserve status for multiple consecutive periods, resulting in two or more DD-214s, the DD-214s may be combined, provided that the end date of one DD-214 is no more than one calendar date from the beginning date of the subsequent DD-214.[10]

The DD-214 also includes a block for the "narrative reason for separation," a short phrase describing the reason for separation. The Department of Defense maintains a list of acceptable narrative reasons for separation; the narrative reason for separation on the DD-214 for claimants who did not complete their first full term of active duty must match exactly one of the reasons on the list for the claimant to be eligible to receive benefits.[11] The list is updated periodically; it was last updated on January 15, 2010.

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[9] See Appeal Board No. 594841 (The claimant, a reservist, received orders returning him to active duty from April 3, 2016 to September 30, 2016, a period of 181 days. However, under Department of Defense financial management regulations [DoD 7000.14-R (010301)], days of service and wages are calculated based on a 30-day month regardless of the number of days in any actual month. As a result, the claimant was credited with 178 days of service. The claimant is considered not to have completed his full term of service and was held ineligible to receive benefits.)

[10] USDOL Unemployment Insurance Program Letter (UIPL) No. 14-16.

[11] Appeal Board No. 544925 (claimant served one year and eight months of a four-year term of active service; he began to feel work-related stress; his narrative reason for separation was "unsuitability" which did not match any of the listed acceptable reasons); *see also*, Appeal Board Nos. 438605 and 525929.

The list of acceptable narrative reasons:

- Attend Civilian School
- Completion of Required Active Service
- Condition, not a Disability
- Condition, not a Disability; Involuntary in lieu of a Board*
- Conditions, not Disability; Resignation
- Defective Enlistment Agreement
- Disability, Aggravation*
- Disability, Aggravation (Enhanced)[1]
- Disability, Existed Prior to Service, Med Board
- Disability, Existed Prior to Service, Med Board (Enhanced)
- Disability, Existed Prior to Service, PEB
- Disability, Existed Prior to Service, PEB (Enhanced)
- Disability, Not in Line of Duty*
- Disability, Not in Line of Duty (Enhanced)*
- Disability, Other
- Disability, Other (Enhanced)
- Disability, Permanent
- Disability, Permanent (Enhanced)
- Disability, Severance Pay
- Disability, Severance Pay (Enhanced)
- Disability, Severance Pay, Combat Related
- Disability, Severance Pay, Combat Related (Enhanced)
- Disability, Severance Pay, Non-Combat
- Disability, Severance Pay, Non-Combat Related (Enhanced)
- Disability, Temporary
- Disability, Temporary (Enhanced)
- Erroneous Entry (Other)
- Force Shaping (Board Selected)*
- Force Shaping-VSP (Voluntary Separation Pay)
- Hardship; General*
- Hardship; Resignation Allowed due to Support of a Dependent*
- Hardship; Servicemember Initiated due to Dependency*
- Holiday Early Release Program
- Insufficient Retainability (Economic Reasons)
- Intradepartmental Transfer
- Medal of Honor Recipient
- Miscellaneous/General Reasons
- Parenthood or Custody of Minor Children
- Pregnancy or Childbirth
- Reduction in Force
- Surviving Family Member

See USDOL UIPL No. 9-10.

** added in 2010*

There are also reasons described as “personality disorders or inaptitude.”[12] These reasons may only be utilized if the individual’s continuous service was at least 365 days.

Narrative Reasons described as “personality disorders or inaptitude”:

- Adjustment Disorder*
- Alcohol Rehabilitation Failure
- Conscientious Objector
- Disruptive Behavior Disorder*
- Drug Rehabilitation Failure
- Ecclesiastical Endorsement
- Erroneous Entry (Alcohol Abuse)
- Erroneous Entry (Drug Abuse)
- Failure to Complete a Commission or Warrant Program
- Failure to Complete a Course of Instruction
- Homosexual Conduct (Acts)*
- Homosexual Conduct (Marriage or Attempted Marriage)*
- Homosexual Conduct (Statement)*
- Impulse Control Disorder*
- Mental Disorder (other)*
- Military Personnel Security Program
- Non-retention on Active Duty
- Non-selection, Permanent Promotion
- Non-selection, Temporary Promotion
- Personal Alcohol Abuse
- Personal Drug Abuse*
- Personality Disorder
- Physical Standards
- Secretarial Authority
- Substandard Performance
- Unsatisfactory Performance
- Weight Control Failure

5 U.S.C. § 8521 (a) (1) (B) (ii) (IV)

**added in 2010*

[12] 5 U.S.C. § 8521 (a) (1) (B) (ii) (IV)

THE EFFECT OF THE UNITED STATES AGENCY'S FINDINGS

The information provided by the United States agency[13] is final and conclusive with respect to whether the ex-serviceman has performed federal military service; the beginning and ending dates of military service and days lost during such periods; type of discharge or release; pay grade at the time of discharge or release; the narrative reason or other reason for separation from active service; and whether or not an individual has met any condition specified by 5 U.S.C. § 8521 (a) (1).[14]

The findings of the Federal military agency are also final and conclusive for all UCX purposes[15] and an ALJ is bound by the narrative reason included in the DD-214. A claimant who believes that the findings of the military agency are incorrect or that information was omitted may request that the military agency issue a correction.[16] It is the responsibility of the individual to inform the state of the action of the military agency taken in response to a request for correction.[17] If an amended DD-214 is issued, the individual may apply to the Appeal Board to reopen any earlier decision which had found the individual ineligible.[18] An amended DD-214 will automatically be assigned a serial number different than that found on the original DD-214.[19]

USDOL OVERSIGHT

Under the regulations, state agencies must provide a copy of all UCX decisions to the United States Department of Labor (USDOL) within 10 days of issuance.[20] If USDOL determines that the

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[13] "The term 'agency' includes any department, independent establishment, commission, administration, authority, board or bureau of the United States or any corporation in which the United States has a proprietary interest, unless the context shows that such term was intended to be used in a more limited sense." 18 U.S.C.§ 6. For UCX purposes, the agency would be the branch of the armed service in which a claimant served.

[14] 5 U.S.C. § 8523 (b) (1) and 20 C.F.R. § 614.21; *see also* Appeal Board No. 544925; and Appeal Board No. 544932 (citing *Strother v District of Columbia Dep't of Employment Services*, 499 A.2d 1225, 1226 (D.C. 1985) ("A state unemployment compensation agency does not have the expertise to determine the ex-service member's discharge status to be contrary to that contained in a military document, and it would be singularly inappropriate for it to attempt to do so.")); *Matter of Martin*, 112 A.D.2d 566 (3d Dep't 1985); *Matter of Narvaez*, 234 A.D.2d 636 (3d Dep't 1996).

[15] 20 C.F.R. § 614.23

[16] 20 C.F.R. § 614.22 (a) (1)

[17] 20 C.F.R. § 614.22 (a) (4)

[18] Appeal Board No. 477370-A (claimant's original DD-214 listed "miscellaneous/general reasons" in the narrative reason for separation" block, which is not on the list of acceptable reasons; the amended DD-214 listed "hardship", which is on the list of acceptable reasons; on the reopening, the claimant was found eligible to receive benefits).

[19] Appeal Board No. 597353 *aff'g* A.L.J. Case No. 015-26136

[20] 20 C.F.R. § 614.1 (d) (1)

decision is contrary to its interpretation of the Act,[21] the state is required to issue a new decision and the earlier decision may not be relied on as precedent.[22] If benefits were paid to the claimant under the earlier, unwarranted decision, USDOL may require that the state restore the funds paid out to the United States.[23]

Practice Tip:

The DD-214 must be entered into evidence in any hearing on whether a claimant is eligible to receive UCX.

The list of acceptable narrative reasons for separation, which is disseminated to the states as part of a USDOL UIPL, has the force of law (see, USDOL UIPL 09-96) and does not need to be entered as an exhibit.

[21] For purposes of the regulations, the "Act" refers to 5 U.S.C. §§ 8521-8524, the statutory authority for UCX. (20 C.F.R. § 614.2 (a)).

[22] 20 C.F.R. § 614.1 (d) (2)

[23] 20 C.F.R. § 641.1 (d) (4)

2.14.2 EMERGENCY UNEMPLOYMENT COMPENSATION

The Emergency Unemployment Compensation Act of 1991,[24] established the Emergency Unemployment Compensation (EUC) program, under which claimants could receive additional benefits for periods ranging from 13 to 33 weeks. To be eligible for EUC benefits, a claimant must have no right to regular, extended or additional benefits under any State or Federal law. The law has been amended several times.

The Supplemental Appropriations Act of 2009 (Public Law 110-252), Title IV created a new temporary unemployment insurance program, the EUC08 program. The EUC08 program established eligibility for Federally funded benefits for an extended period of time, for claimants who had exhausted their regular UI benefits on or after May 1, 2007.[25] This program was extended for different periods of time based on consideration of an individual State's unemployment rate, for a total of 4 tiers; New York State ultimately triggered eligibility for benefits under all 4 tiers, based on their unemployment rate during the period(s) at issue. Additional programs were later created,[26] authorizing Federal Additional Compensation (FAC) which provided a supplement of $25.00 to the benefit rate, and Extended Benefits (EB) which, when combined with regular and EUC08 benefits, could allow the receipt of benefits under a combination of these program for up to 99 weeks, depending on claim dates and program dates[27]. The last extension of the EUC08 program was in the American Taxpayer Relief Act of 2012, which extended the program until January 1, 2014.[28]

Issues related to EUC08 may arise as eligibility for EUC08 benefits where a claimant had requested benefits and was denied (based on the date of the claim); where the claimant was receiving EUC08 and, at the expiration of the benefit year, was entitled to regular benefits under a new valid original claim; or where the claimant's right to EUC benefits has been exhausted.

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[24] Public Law 102-104, as amended.

[25] Title IV, § 4001 (b)

[26] American Recovery and Reinvestment Act of 2009 (Public Law 111-5), Division B, Title II; *see also* 20 C.F.R. § 615

[27] *See* Appeal Board No. 561377 for sample analysis of the tiers, eligibility and the resultant payment periods; *see also* U.S. Department of Labor UI Program Letter No. 11-09, dated February 23, 2009 and U.S. Department of Labor UI Program Letter No. 04-10, dated December 23, 2009 and Changes 1 -11 to the UIPL.

[28] Public Law 112-240, Title V, Section 501 (a).

ELIGIBILITY FOR EMERGENCY UNEMPLOYMENT COMPENSATION

Generally, if a claimant is eligible for regular unemployment benefits, he or she is not eligible for EUC08 benefits. To determine whether a claimant is entitled to file a new valid original claim, the Department of Labor is required to check each quarter to determine whether an individual receiving EUC08 meets the requirements to establish a new benefit year.[29] Where a claimant is eligible for benefits under a new claim, the Department of Labor files a new claim on the claimant's behalf.

Prior to 2011, the claimant was required to receive regular benefits even if he or she would receive a benefit rate that was less than the rate of the EUC08 benefits.[30] An amendment to the law in 2011 provided that claimants whose original claim expired after July 2010 could continue to receive their EUC08 benefits if the new weekly benefit rate would be at least either $100.00 or 25 percent less than the weekly benefit rate payable on the EUC08 claim.[31]

REPAYMENT / WAIVER

Benefits received under this program are automatically repayable even where there is no fault on the part of the claimant.[32] However, repayment cannot be required until a determination has been made and the claimant provided an opportunity for a fair hearing.[33] States have the option to elect to implement a waiver program[34] for non-fraud overpayments where the benefits were received through no fault on the part of the claimant.[35]

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[29] Unemployment Insurance Program Letter 23-08, Attachment A (Implementing and Operating Instructions for EUC08).

[30] *See* Appeal Board No. 578065 (The claimant was receiving EUC08 benefits at a rate of $257.00 under a claim effective September 22, 2008; the claimant's benefit rate under a new claim effective July 22, 2013, was $76.00. Claimant was not entitled to continue receiving EUC08 benefits as he was able to file a new valid original claim).

[31] Unemployment Compensation Extension Act of 2010 (Public Law 111-205 § 3)

[32] *Matter of Silver*, 84 A.D.3d 1634 (3d Dep't 2011)

[33] Title IV, § 4005 (c) (2)

[34] New York has historically opted to elect a waiver program.

[35] To determine fault, the reviewer "must consider whether the overpayment resulted directly or indirectly, partially or totally, from any act or omission of the claimant that was erroneous, inaccurate or otherwise wrong, when the claimant knew or could have been expected to know that the act or omission was erroneous, inaccurate or otherwise wrong." US DOL Unemployment Insurance Program Letter No. 23-08, Attachment A (Implementing and Operating Instructions for EUC08).

Claimants must request a waiver of the repayment. In order for it to be waived, it must be determined that the repayment would be contrary to equity and good conscience.[36] The factors to determine whether equity and good conscience exist are (1) whether the overpayment was the result of a decision on appeal; (2) whether the state agency had given notice to the individual that the individual may be required to repay the benefit payment in the event of a reversal of the eligibility determination on appeal; and (3) whether recovery of the overpayment would cause financial hardship to the individual.[37] Financial hardship is defined as resulting in the loss of necessary food, medicine, and shelter for a period of 30 days.[38]

Financial hardship has been held not to exist where the claimant was able to pay his bills by putting expenses on his credit card;[39] where the salary of the claimant's wife was sufficient to cover the necessary expenses;[40] and where the claimant's expenses were being paid by her mother.[41] Financial hardship was held to exist where the claimant's monthly net income of $1,500.00 could not cover her monthly necessary expenses of $1,796.00.[42]

In cases where a decision is made by the hearing ALJ or by the Appeal Board that a claimant was not at fault for receipt of the overpaid EUC08 benefits, the matter can be referred back to the Department of Labor to make a determination on whether repayment may be waived.[43]

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[36] Title IV, § 4005 (b) New York has previously elected to implement this waiver provision.

[37] US DOL Unemployment Insurance Program Letter No. 23-08, Attachment A (Implementing and Operating Instructions for EUC08

[38] Unemployment Insurance Program Letter 47-92, Attachment A: For the purpose of this paragraph (2), an extraordinary financial hardship shall exist if recovery of the overpayment would result directly in the individual's loss of or inability to obtain minimal necessities of food, medicine, and shelter for a substantial period of time; and an extraordinary and lasting financial hardship shall be extraordinary as described above and may be expected to endure for the foreseeable future. In applying this test in the case of attempted recovery by repayment, a substantial period of time shall be 30 days, and the foreseeable future shall be at least three months. In applying this test in the case of proposed recoupment from other benefits, the longest potential period of benefit entitlement as seen at the time of the request for a waiver determination. In making these determinations, the State agency shall take into account all potential income of the individual and the individual's family and all cash resources available or potentially available to the individual and the individual's family in the time period being considered.

[39] *See* Appeal Board No. 547676 ("difficulty in paying his bills does not amount to extraordinary financial hardship").

[40] Appeal Board No. 550698

[41] Appeal Board No. 549705

[42] Appeal Board No. 577282

[43] *See* Appeal Board No. 546640-A

Where the overpayment has resulted through some fault on the part of the claimant, there is no authority to waive repayment of the benefits.[44] However, the provisions of Labor Law § 597(3)[45] still apply.[46]

2.14.3 DISASTER UNEMPLOYMENT ASSISTANCE (DUA)

Disaster Unemployment Assistance (DUA) provides unemployment benefits and re-employment services to individuals who have become unemployed as a result of a major disaster, who are not otherwise eligible for regular state unemployment insurance benefits.[47] Benefits under DUA are wholly federally funded and are not charged to the experience accounts of employers.[48] The maximum duration of DUA benefits is 26 weeks.[49]

Upon the request of the Governor, the President may declare that a major disaster exists and define those areas in the state that are eligible for federal assistance. After such a declaration, the Department of Labor will announce the availability of DUA and the places where disaster victims should apply for assistance.

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[44] *See* Appeal Board No. 582404 (Board found that the Judge was without jurisdiction to make a decision granting waiver, as a matter of law, where the claimant was at fault for the overpayment).

[45] Pursuant to Labor Law § 597 (3), "any determination regarding a benefit claim may, in the absence of fraud or willful misrepresentation, be reviewed only within one year from the date it is issued because of new or corrected information."

[46] *See* Appeal Board No. 559260 (claimant filed a claim effective January 4, 2010; she began receiving pension benefits effective February 10, 2010; she received regular benefits and EUC08 benefits at her full weekly rate. The Department of Labor did not issue a determination reducing her benefit rate under Labor Law § 600 until January 2011 and did not issue an overpayment determination until March 2011. No determination of willful misrepresentation was issued. The Commissioner did not have the jurisdiction to redetermine the claim as more than six months had passed since the claimant's right to her pension had been established); Appeal Board No. 557325 (claimant received regular benefits and EUC08 benefits at the weekly rate of $405.00. At the expiration of his benefit year he filed a new claim effective February 9, 2009; his earnings during his benefit year entitled him to a weekly rate of $160.00, however, the Department of Labor continued to pay him EUC08 benefits at the $405.00 rate. A determination of repayable EUC08 overpayment was not issued until March 29, 2010. As the claimant was not at fault for the Department's failure to make the quarterly determination whether he was eligible for regular unemployment insurance or EUC08, there was no authority to redetermine benefits paid more than one year prior to March 29, 2010).

[47] *See generally,* 42 USC § 5177 and the implementing federal regulations at 20 C.F.R. Part 625; *see also* USDOL ET Handbook No. 356 (DUA), Unemployment Insurance, Disaster Unemployment Assistance Handbook, https://wdr.doleta.gov/directives/attach/ETAH/356/ETHand356_toc.pdf (site last visited July 16, 2019)

[48] *See* https://www.labor.ny.gov/ui/claimantinfo/specialprovisions.shtm (site last visited July 16, 2019).

[49] 20 C.F.R. § 625.2

ELIGIBILITY

An eligible unemployed worker under the DUA regulations is someone who (1) experiences a "week of unemployment" [50] following the "date the major disaster began" [51] when such unemployment is a direct result of the major disaster; (2) is unable to reach the place of employment as a direct result of the major disaster; (3) is to begin employment and does not have a job or is unable to reach the job as a direct result of the major disaster; (4) has become the breadwinner or major support for a household because the head of the household has died as a direct result of the major disaster; or (5) cannot work because of injuries caused as a direct result of the major disaster.[52]

Self-employed individuals may also be eligible for DUA if the individual's principal source of income comes from self-employment that was in or was to commence in the major disaster area at the time the disaster began and they meet one of the criteria for eligible unemployed workers, as stated above.[53] Additionally, a self-employed individual may be eligible for partial DUA if the major disaster substantially impacted the ability to perform his or her full-time customary services, resulting in wages of less than the unemployment benefit rate.[54] Self-employed individuals are required to submit documentation to establish prior earnings or the performance of services.[55]

If DUA is paid to an applicant based on an affidavit of employment or earnings, the individual must provide supporting documentation within 21 days.

If the documentation of employment is not provided, the state must cancel DUA eligibility, discontinue payments and issue an overpayment determination. If the documentation of earnings is not provided, the state must reduce the weekly benefit amount to the state's DUA minimum.

New York Labor Law § 597 provides that the Commissioner may redetermine a claimant's UC benefit rate based on new or corrected information regarding the claimant's base period remuneration. Such state laws now apply to eligibility for DUA.[56] If a New York applicant submits

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[50] 20 C.F.R. § 625.2 (w) (1)

[51] 20 C.F.R. § 625.2 (e)

[52] 20 C.F.R. § 625.5 (a)

[53] 20 C.F.R. § 625.5 (b)

[54] 20 C.F.R. § 625.6 (f)

[55] 20 C.F.R. § 625.5 (e) (1) and (2); *see also,* A.L.J. Case No. 013-03833 (claimant, who claimed that he ran a catering business out of the kitchen in his apartment, was found ineligible for DUA since he could not substantiate that he was employed prior to the storm).

[56] See USDOL UI Program Letter No. 09-19 (March 15, 2019)

documentation before the end of the disaster assistance period (DAP)[57], the state must issue a redetermination on the claimant's eligibility for DUA and cancel any overpayment.

A foreign national must be legally authorized to work in the United States to be eligible for DUA.[58]

An individual is eligible to receive DUA if the individual has filed an initial application for DUA within 30 days of the date of the announcement of the availability of funds.[59] With respect to a week of unemployment, an individual is eligible if that week begins during a DAP; an Agreement with the applicable State is in effect; the individual is an unemployed worker or an unemployed self-employed individual; and he or she has filed a timely application for a payment of DUA with respect to that week.[60]

DUA benefits will only be approved if it is found that an applicant is not eligible for regular unemployment benefits. He or she must also be unemployed or partially unemployed as a direct result of the major disaster; be able and available for work, unless injured as a direct result of the disaster; and cannot have refused a suitable offer of employment.[61]

INELIGIBLE FOR REGULAR BENEFITS

A claimant who is eligible for regular unemployment benefits is not eligible for DUA, including during the time period that a claimant is not receiving benefits due to the waiting week. [62]

A claimant who is under a disqualification for a cause that occurred prior to the major disaster may be eligible for DUA if the individual becomes unemployed again as a result of the disaster.[63] For example, when a claimant is disqualified from receiving benefits on the basis of a loss of employment due to misconduct returns to work and is subsequently unemployed due to the disaster prior to making 10 times his or her weekly benefit rate, the claimant would not be eligible for regular unemployment benefits but would be eligible for DUA if he or she meets all other eligibility conditions.

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[57] 20 C.F.R. § 625.2 “Disaster Assistance Period means the period beginning with the first week following the date the major disaster began and ending with the 26th week subsequent to the date the major disaster was declared.”

[58] See USDOL ET Handbook No. 356 (DUA) Chapter III-4

[59] 20 C.F.R. § 625.8 (a).

[60] 20 C.F.R. § 625.4 (a), (b), (c), (e)

[61] 20 C.F.R. § 625.4

[62] 20 C.F.R. § 625.4 (i)

[63] 20 C.F.R. § 625.4 (i)

However, a claimant who has previously filed a valid original claim but is not receiving benefits because he or she lacks total unemployment after the disaster is not eligible for DUA.[64]

Additionally, an individual is ineligible for DUA if he or she did not lose employment due to the disaster. Receipt of passive income (rents and pensions), does not constitute employment.[65]

DIRECT RESULT OF THE MAJOR DISASTER

DUA eligibility is based on whether the worker was unemployed as a "direct result" of the major disaster.[66] For DUA purposes, unemployment must have resulted from: (1) physical damage or destruction of the place of employment; (2) the physical inaccessibility of the place of employment in the disaster area due to its closure by the federal, state or local government in immediate response to the disaster, or (3) lack of work or loss of revenues, by an employer or self-employed individual, of at least the majority of revenue or income from an entity in the disaster area that was damaged, destroyed, or an entity in the disaster area closed by the federal, state or local government.[67] Unemployment is deemed to be a direct result of the major disaster if it is an immediate result of the disaster itself -- and not merely hastened by the disaster or related to a ripple effect in the economy.[68]

For example, where due to a storm, a hotel stopped taking guests and no longer needed the claimant to drive guests from the airport, the claimant's unemployment was a direct result of the

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[64] *See* A.L.J. Case No. 013-35263 (claimant, a self-employed pharmacist, was not eligible for either regular unemployment benefits or DUA benefits because he was working six days per week at reduced hours and could not be said to be an unemployed individual despite his argument that he was unable to pay himself a salary during the time period directly following the disaster).

[65] *See, e.g.,* A.L.J. Case No. 013-07411 (claimant, who was retired and received income from a rental property, was not eligible for DUA when the amount of receipt of rental income decreased due to his tenants being displaced after a major disaster).

[66] See A.L.J. Case No. 013-12229 (claimant in planning stages of opening assisted living facility, but had not incorporated, had not received a license from the State, and had not completed necessary renovations to building) and 20 C.F.R. § 625.5 (c)

[67] *See* 20 C.F.R. § 625.5 (c) (1), (c) (2), (c) (3)

[68] See 20 C.F.R. § 625.5 (c)

major disaster.[69] Loss of transportation,[70] destruction of the prior work location,[71] and elimination of work schedule, [72] can also be an immediate and direct cause of the major disaster. the DUA is denied when unemployment is the result of a "longer chain of events" precipitated or exacerbated by the disaster.[73] For example, a claimant who was injured after the storm, while electing to remove storm debris, was held ineligible for DUA.[74] Similarly, DUA was denied to a claimant who quit ongoing work to devote time to home repairs.[75] Additionally, unemployment due to a discharge for poor performance does not result in eligibility for DUA, even if the poor performance may be related to the aftereffects of the storm.[76]

DUA can also be denied if claimant quits, intending to relocate, but the intended relocation was not directly related to the disaster.[77] Further, during time periods where agricultural or self-employed individuals would not customarily be working, they are not eligible for DUA payments.[78]

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[69] *See* A.L.J. Case No. 013-06137; *compare* A.L.J. Case No. 013-00675 (although claimant contended that her unemployment was a result of being displaced after a major disaster, the evidence established that her month-long absence from work was a result of her deliberate choice to stop working, not a direct result of the major disaster).

[70] *See* A.L.J. Case Nos. 013-09071 (claimant could not get to work because his car was destroyed in the storm and family considerations made public transportation unfeasible) and 013-25350 (claimant unable to commute to work as subway system from her home to place of work was not functioning).

[71] *See* A.L.J. Case No. 013-15374 (claimant's employer, a leather goods vendor, no longer at former work site following storm); see, also, A.L.J. Case No. 013-13025 (claimant hired by restaurant just prior to storm to begin work October 29; restaurant destroyed on October 27 by storm, so claimant could not begin work).

[72] *See* A.L.J. Case Nos. 111-12207 and 111-13846 (painter hired before storm to renovate restaurant lost employment because owner not interested in continuing renovation after extensive damage from storm).

[73] See 20 C.F.R. § 625.4 (d) and 625.5 (c)

[74] See A.L.J. Case No. 013-11868 (claimant fell off ladder while trying to remove a tree branch hanging over his vehicle and sustained injuries to his head and neck rendering him unable to work).

[75] See A.L.J. Case No. 013-31093

[76] See A.L.J. Case No. 013-10093 (claimant relocated to Washington D.C. due to destruction of his home in New York State; he tried commuting to work in Nassau Co., but the stress and fatigue caused by the longer commute resulted in poor work performance; however, the business was not shut down and work was always available).

[77] See A.L.J. Case No. 111-13833 (claimant's apartment was flooded but her employer's business remained open; the claimant quit, telling the owner she was relocating to South Carolina, because she assumed she would not be granted additional time off to address her housing issues) and A.L.J. Case No. 013-09419 (claimant temporarily relocated to Rhode Island, due to the flooding of her home, but her employer's place of business was not closed and work was available).

[78] *See* ET Handbook No. 356, Chapter II-4. Additional "special self-employed examples" can be found in the ET Handbook at Chapter II-5.

AVAILABILITY AND CAPABILITY

To be eligible for DUA, the claimant must be able to work and be available for work within the meaning of the applicable State law: provided, that an individual shall be deemed to meet this requirement if any injury caused by the major disaster is the reason for inability to work or engage in self-employment; or, in the case of an unemployed self-employed individual, the individual performs service or activities which are solely for the purpose of enabling the individual to resume self-employment.[79]

Claimants are not entitled to DUA (1) for any week after the week in which they are reemployed in a suitable position or (2) if, without good cause, they refuse a bona fide offer of reemployment to a suitable position,[80] or refuse to resume or commence suitable self-employment.[81]

REDUCTION OF DUA

The weekly DUA amount is reduced by wages earned (or income received by someone self-employed) in such week in accordance with state law provisions. Reduction will also be made by the amount of supplemental unemployment benefits, private income protection insurance, or any other type of benefit for loss of wages to illness or disability that the individual receives or would receive or such week by properly applying. Receipt of pension amounts is also treated in accordance with the provisions of state law.[82]

OVERPAYMENT OF BENEFITS

Overpayments of DUA benefits are recoverable by law without regard to fault.[83] A State cannot waive recoverability of DUA overpayments.[84]

TIMELINESS

Late applications for DUA, after the 30-day filing period, can be accepted if the applicant had good cause for the late filing. But in no event shall an initial application be accepted if it is filed after the

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[79] See 20 C.F.R. § 625.4 (g)

[80] See 20 C.F.R. § 625.13 (b)

[81] See 20 C.F.R. § 625.4 (h)

[82] See 20 C.F.R. § 625.13 (a)

[83] See 20 C.F.R. § 624.14 (a); see, for example, A.L.J. Case No. 014-03235 (claimant was eligible for Emergency Unemployment Compensation and was erroneously held to be eligible for DUA for the same time period).

[84] See 20 C.F.R. § 624.14 (e)

expiration of the DAP. An individual who exhausts UC during the disaster assistance period may have good cause for late filing of an initial DUA application.[85] Good cause may also exist where an individual is hospitalized as the result of injuries suffered due to the disaster.

When the State has publicly announced the availability of DUA assistance through appropriate news media, a reasonable basis on which to justify good cause due to ignorance of the program must be well documented.[86]

A hearing request on a DUA determination or redetermination must be made within 60 days from the date it was issued or mailed.[87] This is done in the same manner as other determinations concerning state unemployment insurance. Where a claimant did not receive the determination and requested a hearing within 60 days of when they were actually informed of the determination or received a copy of it, then the request should be considered timely.

New York Labor Law § 620 (1) provides that a late hearing request for UC may be excused for good cause, including physical condition or mental incapacity. This standard also applies to a late hearing request on a DUA determination.[88]

Anyone who disagrees with the DUA decision has fifteen days (not twenty) to appeal to USDOL. There is no appeal to UIAB. The federal agency can affirm, reverse or modify the decision of the Administrative Law Judge (ALJ). USDOL can also remand issues to the ALJ for a further hearing, or to the state agency for investigation and determination.

[85] See USDOL ET Handbook No. 356 (DUA) Chapter III paragraph (1) (e)

[86] See USDOL ET Handbook No. 356 (DUA) Chapter III paragraph (3) (a)

[87] See 20 C.F.R. § 625.10 (a)

[88] See NB No. 148 (29 April 2019)

Practice Tip:

Writing the DUA Decision

Declared disasters are usually designated with a name and number by USDOL. That information should be added to the issue section (underneath the rights paragraph). For example: Eligibility for Disaster Unemployment Assistance "– Hurricane Sandy 4085 DR".

Findings of Fact should include (for jurisdictional purposes) the name of the disaster and the date that it hit the claimant's location. The location will usually be the name of a county within the area affected by the disaster. It must be stated that the claimant either lives or works in that county. When the only issue is entitlement to DUA, there is no need for findings about the number of weeks the claimant may or may not be entitled to.

Opinions start with the statutory citation to 42 USCS § 5177. This is followed with text from and citation to each applicable regulatory section from 20 C.F.R. Part 625. The storm designation assigned by USDOL must be inserted. For example:

> Pursuant to 42 USCS § 5177 et seq., known as The Robert T. Stafford Disaster Relief and Emergency Assistance Act, and the implementing federal regulations for Disaster Unemployment Assistance (DUA) as set forth in 20 C.F.R. § 625, an individual unemployed as a result of a major disaster may receive DUA for the weeks of such unemployment for up to 26 weeks, so long as the "individual is not entitled to any other unemployment compensation … or waiting period credit." 20 C.F.R. § 625.4 (i). Hurricane Sandy designation per the USDOL is 4085 DR. Pursuant to 20 C.F.R. § 625.14(a), if the State agency of the applicable state finds that an individual has received a payment of DUA to which the individual is not entitled under the Act and this part, whether or not the payment was due to the individual's fault or misrepresentation, the individual shall be liable to repay to the applicable State the total sum of the payment to which the individual was not entitled.

A copy of the decision goes to the USDOL Regional Administrator in Boston. Based on representative code "DUA" in the ABS database, this address should appear in the caption (the administrator's name is subject to change):

Name, Regional Administrator
US Dept of Labor -- ETA
JFK Federal Building – Room E-350
Boston MA 02203

Practice Tip:

Writing the DUA Decision (cont'd)

When a DUA decision is generated, the standard UIAB Notice of the right to appeal/apply to reopen should be absent or manually deleted. Instructions for requesting a federal review should appear instead (by default in English and Spanish). If that appeal statement is omitted, it must be inserted.

PLEASE TAKE NOTICE that this decision has been duly mailed on the date listed above. If you appeared at the hearing and are not satisfied with this decision, you may request a review by the Regional Administrator of the U.S. Department of Labor, Employment and Training Administration within **FIFTEEN DAYS** from the date this decision was mailed. Send your request to Name, Regional Administrator, U.S. Department of Labor-ETA, JFK Federal Building, Room E-350, Boston, MA 02203. Any party who failed to appear at the hearing has the right to apply to reopen the case. The letter requesting that the case be reopened should be mailed to the address at the top of this page. For the application to be granted, the party must apply within a reasonable time and must establish good cause for its failure to appear.

TOME NOTA: esta decisión ha sido debidamente enviada por correo en la fecha citada arriba. Si usted compareció a la audiencia y no está satisfecho con la decisión, puede solicitar una revisión al Administrador Regional del Departamento de Trabajo de Estados Unidos, Administración de Empleos y Capacitación, dentro de los **QUINCE DÍAS** contados a partir de la fecha de envío por correo de esta notificación. Envíe su petición a: *Nombre, Regional Administrator, U.S. Department of Labor-ETA, JFK Federal Building, Room E-350, Boston, MA 02203*. Si una de las partes no compareció a la audiencia tiene el derecho de solicitar que se reabra el caso. La carta de petición de reapertura del caso debe enviarse por correo a la dirección señalada en la parte superior de esta página. Para que la petición se otorgue, la parte interesada deberá solicitarlo en un plazo de tiempo razonable y debe establecer motivo justificado por no haber comparecido a la audiencia.

If the notice of hearing was in a language other than Spanish, the appeal rights should automatically appear in that other language. Before printing the DUA decision, any UIAB Notice of Decision (back) pages (AB 665) must be deleted.

2.14.4 TRADE ADJUSTMENT ASSISTANCE PROGRAM (TAA) AND TRADE READJUSTMENT ALLOWANCE (TRA)

The Trade Adjustment Assistance for Workers program (TAA), is a federal program that assists workers who are unemployed as a result of an increase in imported goods. The USDOL certifies specified groups of workers as adversely affected by foreign imports and therefore eligible to apply for TAA.[89]

The program helps eligible individuals return to suitable employment by providing reemployment services and other benefits including Trade Readjustment Allowance (TRA) of up to 130 weeks of cash payments for workers enrolled in full-time training, job search allowances of up to 90 percent of costs up to $1,250, relocation allowances of 90 percent of costs, and an additional

[89] Trade Act of 1974, 19 U.S.C. § 2101 et seq.; 20 C.F.R. § 617.2

lump sum payment of up to $1,250.[90] The program also provides adjustment assistance including counseling, testing, placement and other supportive services.[91]

There were amendments to the law in 2011 and 2015. The 2011 amendment[92] included reduction in certain waivers of the requirement to be enrolled in training; elimination of additional weeks of cash assistance; and authorization to the states to offer allowances for job searches and relocations up to $1,250.00 for any worker. The 2015 amendment[93] included the repeal of certain sunset provisions which had been included in the 2011 bill; and an extension of the programs to June 30, 2021. In all TAA or TRA cases, care must be taken that the case is decided under the specific law in effect at that time.

REQUIREMENTS FOR ELIGIBILITY FOR TRA

To receive TRA, the claimant must meet the requirements set forth in 19 U.S.C. § 2291. The claimant's separation must have occurred within two years after the USDOL issued the certification.[94] In addition, the claimant must have worked at least 26 weeks in the adversely affected employment during the 52 weeks prior to the separation and have earned at least $30.00 per week in that employment.[95] The claimant must be entitled to receive unemployment insurance benefits based on the qualifying separation from employment and also must have exhausted his

[90] 19 U.S.C. § 2297 (b); 2298 (b) (1); 20 C.F.R. § 617.3 (m)

[91] 19 U.S.C. § 2295; 20 C.F.R. § 617.1 (a)

[92] Trade Adjustment Assistance Extension Act of 2011 (Public Law 112-40)

[93] Trade Adjustment Assistance Reauthorization Act of 2015 (Public Law 114-27, Title IV)

[94] 19 U.S.C. § 2291 (a) (1): Such worker's total or partial separation before the worker's application under this part occurred—(A) on or after the date, as specified in the certification under which the worker is covered, on which total or partial separation began, or threatened to begin, in the adversely affected employment,(B) before the expiration of the 2-year period beginning on the date on which the determination under section 2273 of this title was made, and (C) before the termination date (if any) determined pursuant to section 2273 (d) of this title.

[95] 19 U.S.C. § 2291 (a) (2); *see also* Appeal Board No. 555549 (claimant filed a claim effective December 1, 2008 and was recalled to work two weeks later; he was separated from his employment on March 8, 2009 and received unemployment insurance benefits from the week ending March 15, 2009, to the week ending December 7, 2009, and then filed a new claim for benefits. He was again recalled to work but was then laid off on December 31, 2009. His December 31, 2009 separation was not qualifying as he had been in benefits from March to December and did not have 26 weeks of employment during the 52 weeks prior to that separation).

or her right to those benefits.[96] Finally, the claimant must be in compliance with work search requirements and enrolled in a TAA-approved training program.[97]

REQUIREMENTS FOR TAA TRAINING APPROVAL

Under 19 U.S.C. § 2296 and the regulations set forth in 20 C.F.R. § 617.22, training shall be approved for an adversely affected worker if the following six conditions are met: (1) there must be no suitable employment available;[98] (2) the worker would benefit from the appropriate training;[99] (3) there must be a reasonable expectation of employment following completion of such training;[100] (4) the training must be reasonably available;[101] (5) the worker must be qualified to undertake and complete such training;[102] and (6) the training must be suitable for the worker and available at a reasonable cost.[103]

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[96] 19 U.S.C. § 2291 (a) (3) and 20 C.F.R. § 617.3 (c) which defines an adversely affected worker as an individual separated from employment due to lack of work. *See also* Appeal Board No. 566471 (the claimant was discharged for making inappropriate comments to a coworker; as his discharge was not due to a qualifying separation, he was not eligible for TRA benefits).

[97] 19 U.S.C. § 2291 (a) (4)-(5).

[98] Suitable employment means work at substantially the same or higher skill level than the worker's past affected employment with wages of not less than 80% of the worker's average weekly wage (20 C.F.R. § 617.22 (a) (1) (i)).

[99] There is a direct relationship between the needs of the worker for skills training and what would be provided by the training program and the worker has the mental and physical capability to undertake, make satisfactory progress in, and complete the training (20 C.F.R. § 617.22 (a) (2)).

[100] Given the job market conditions expected to exist at the time of the completion of the program, there is a reasonable expectation that the worker will find a job using the skills and education acquired while in training, after completion of the training. A "reasonable expectation of employment" does not require that employment opportunities for the work be available, or offered, immediately upon completion of the approved training. There must be a fair and objective projection of job market conditions expected to exist at the time of completion of training (20 C.F.R. § 617.22 (a) (3)). *See Matter of Nguyen,* 24 A.D.3d 941 (3d Dep't 2005) (TRA benefits denied where at the time of his application, claimant was enrolled in a general studies program at a local community college, and would not prepare him for a specific job or occupation upon its completion); and see Appeal Board No. 575484 (claimant was enrolled in a liberal arts/math program at a community college and had no clear cut objective or goal; the purpose of the training was only to obtain a degree).

[101] The training is accessible to the worker within his or her normal commuting area (20 C.F.R. § 617.22 (a) (4)).

[102] Whether a worker is qualified requires that the evaluation include the worker's physical and mental capabilities, educational background, work experience, and financial resources (20 C.F.R. § 617.22 (a) (5)).

[103] Training may not be approved for one provider if substantially similar training can be obtained from another provider at a lower total cost (20 C.F.R. § 617.22 (a) (6)); in addition, training may not be approved if the occupational area required an extraordinarily high skill level and the total costs are substantially higher than the costs for other suitable training (20 C.F.R. § 617.22 (b)).

TRAINING ENROLLMENT DEADLINES

Workers must be enrolled in training by the end of the 26th week after certification or layoff, whichever is later, to be eligible to receive TRA. However, an additional 45 days may be granted if the U.S. Secretary of the Treasury determines there are extenuating circumstances beyond the control of the worker to justify an extension in the enrollment period.[104] "Enrolled in training" means "when the worker's application for training has been approved by the state agency and the training institution has furnished written notice to the state agency that the worker has been accepted in the approved training program which is to begin within 30 calendar days of the date or such approval."[105] A claimant who starts attending a training program prior to approval is not considered to be "enrolled in training" under the regulation.[106] In general, there are no exceptions for failing to meet the deadlines.[107] However, under certain circumstances, exceptions to the enrollment deadline are allowed where a worker was not advised on time about the deadline.[108] When a worker's failure to meet the deadline for applying for TRA or re-enrolling in training was

[104] 19 U.S.C. § 2291 (a) (5) (A) (ii) (III).

[105] 20 C.F.R. § 617.11 (2) (vii) (D) (1); *see also* Training and Employment Guidance Letter No. 22-08 ("'enrolled in training' continued to mean that the worker's application for training has been approved by the [cooperating state agency]"); Appeal Board No. 553816 (The date of the USDOL was August 24, 2009, making February 26, 2010, the last day of the 26th week after the certification The claimant did not meet with the Department of Labor Special Programs office until April 2010 and a waiver application was submitted on her behalf on April 28; the application was denied as the claimant had not met the deadline).

[106] *See* Appeal Board No. 602224 (Claimant was accepted into and officially enrolled in a community college on July 24, 2017, prior to applying for approval of training. As the training had not been approved, it did not meet the regulation, which is meant to apply to prospective training); Appeal Board No. 575484.

[107] *See* Training and Employment Guidance Letter No. 22-08 ("a [cooperating state agency] may not waive the enrollment after the deadlines have passed").

[108] *See* Training and Employment Guidance Letter No. 5-15, Attachment A, "Operating Instructions for Implementing the Trade Adjustment Assistance Reauthorization Act of 2015 (TAARA 2015)"; *see also*, Appeal Board No. 519507 (in 2003, claimant was advised by a Department of Labor representative that she could take multiple courses in English as a Second Language (ESL) without concurrently taking another skills class; the claimant relied on this advice to enroll in two ESL classes without taking the other skills class. In 2004, the Department of Labor changed its policy to provide that an ESL class could be taken only once and had to be taken concurrently with the other skills class. The claimant was not informed of the change in policy and, as a result, the Board overruled the determination denying TRA benefits) and Appeal Board No. 512933-A (after enrolling in a marketing course at a community college, the claimant discussed changing his program with his Department of Labor employment counselor; the counselor told the claimant his new program could be approved and did not inform him that TRA rules did not allow a second course of study; acting in reliance on the discussion, the claimant left the college and enrolled in a cosmetology course; as the claimant was not informed of the rule, the Board overruled the determination denying TRA training approval for the cosmetology course).

caused by the worker's own negligence, carelessness, or procrastination, good cause to waive these time limitations does not exist.[109]

LENGTH AND CONDITIONS OF TRAINING

The maximum duration of any approvable training is 104 weeks (two years).[110] No individual shall be entitled to more than one training program under a single certification.[111] Attendance in the training must be full-time.[112] Distance (i.e. online) training is approvable under certain circumstances.[113]

[109] *See* Training and Employment Guidance Letter No. 5-15, Attachment A, "Operating Instructions for Implementing the Trade Adjustment Assistance Reauthorization Act of 2015" (TAARA 2015).

[110] 20 C.F.R. § 617.22 (f) (2).

[111] 20 C.F.R. § 617.22 (f) (2); *see also Matter of Brodie*, 261 A.D.2d 732 (3d Dep't 1999) (TAA benefits in connection with a business management program denied where in June 1978 claimant applied and received TAA training benefits to participate in a computer program curriculum. He withdrew from the course because he was called back to work by his employer. In December 1995, he again applied for TAA training benefits in connection with a business management program pursuant a certification from the same employer. The request was denied because an individual is entitled to one training program under a certification); *Matter of Ford*, 12 A.D.3d 955 (3d Dep't 2005) (application for TAA benefits to cover last two years of law school were denied where the claimant had already received claimant had previously been approved for – and received – training as a paralegal); Appeal Board No. 555367 (TRA denied where the certification to apply for assistance was signed in March 2015. Claimant was eligible for TAA and was approved to attend an AAS degree program in computer information at a community college for two semesters during 2009-2010 school year. He did not attend the second semester due to health reasons. He decided to change career paths to become a chef or cook and switched to the college's hospitality management program in hospitality food services. His request for TAA approval was denied because he was limited to one training program per certification).

[112] 20 C.F.R. § 617.22 (f) (4).

[113] *See* Training and Employment Guidance Letter No.7-00 (October 30, 2000) ("[T]he key element to approvability of distance training is based primarily on the interactive nature of the classroom training experience between instructor and student. A means of communication must be established where the instructor can ask questions of the students, and the students can respond and ask questions of the instructor. Thus, 20 C.F.R. § 617.22 (a) is interpreted as permitting approval of distance training when it is part of a curriculum that: (1) leads to the completion of a training program; (2) requires students to interact with instructors;(3) requires students to take periodic tests; and (4) Requires students to come onto campus or other approved facility, for tests and meetings with instructors").

OTHER PROHIBITIONS ON TRAINING

Training cannot be approved if the individual is required to pay a fee or tuition with his or her own private funds.[114] Training cannot be approved if it is conducted totally or partially outside of the United States.[115]

PAYMENT OF TRA DURING SCHEDULED BREAKS IN TRAINING

An individual who is otherwise eligible for TRA may continue to be eligible during a break in training, but only if a scheduled break is no longer than 14 days, and when the following conditions exist: (1) the individual was participating in TAA-approved training immediately preceding the break; (2) the break is provided for in the published or previously established schedule issued by the training provider; and (3) the individual resumes participation immediately after the break ends.[116]

LACK OF TRAINING PARTICIPATION

An individual who fails to begin or ceases participation in the approved training program, without justifiable cause, is ineligible to receive TRA payments.[117] A worker is deemed to have failed to begin participation in a training program when the worker fails to attend all scheduled training classes and other training activities in the first week of the training program. [118] A worker is deemed to have ceased participation in a training program when the worker fails to attend all the training classes and other training activities scheduled by the training institution in any week of the training program.[119] Justifiable cause means such reasons that would excuse the individual's conduct when measured by conduct expected of a reasonable individual in similar circumstances.[120]

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[114] 20 C.F.R. § 617.22 (h)

[115] 20 C.F.R. § 617.22 (i)

[116] 19 U.S.C. § 2293 (f); 20 C.F.R. § 617.15 (d); *see also Matter of Belcher,* 235 A.D.2d 877 (3d Dep't 1997) (TRA denied between December 18, 1995 and January 21, 1996 where the break in training during this period exceeded 14 days. The Court also affirmed the Board's decision denying the claimant a travel allowance); *Matter of Williams*, 251 A.D.2d 793 (3d Dep't 1998) (TRA denied between December 18, 1995 and January 14, 1996 where the break in training during this period exceeded 14 days).

[117] 20 C.F.R. § 617.18 (b) (2) (i)

[118] 20 C.F.R. § 617.22 (b) (2) (ii) (A)

[119] 20 C.F.R. § 617.22 (b) (2) (ii) (B)

[120] 20 C.F.R. § 617.22 (b) (2) (ii) (C)