

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JULIE ANN RAYSBROOK,)	NO. 67863-9-I
)	
Appellant,)	DIVISION ONE
)	
v.)	
)	UNPUBLISHED OPINION
STATE OF WASHINGTON,)	
DEPARTMENT OF EMPLOYMENT)	
SECURITY,)	
)	
Respondent.)	FILED: February 19, 2013
)	

Leach, C.J. — Julie Raysbrook appeals a trial court order affirming the Washington Employment Security Department commissioner’s denial of her requests to modify her commissioner-approved training plan and for training benefits after a community college nursing program did not accept her as a student. Because the commissioner’s unchallenged findings of fact support his conclusions of law and decisions, we affirm.

FACTS

In 2009, the Washington Employment Security Department (Department) approved Julie Raysbrook’s application for commissioner-approved training (CAT) and training benefits (TB) for the Shoreline Community College nursing program from September 20, 2009, until May 30, 2012. The approved program

included prerequisite nursing courses. When the Department approved her request, it informed her:

If you do not start training, withdraw, or attend less than full-time, you are no longer eligible for Training Benefits or Commissioner Approved Training and must notify the Training Benefits unit by mailing them written notification.

You must provide any change in your program status in writing to the Training Benefits Unit. You must mail a completed Training Benefits Plan Modification Information application to the Training Benefits Unit prior to any change in your original approved program. There are no exceptions. Notifying any other representative instead is not sufficient notification. Submitting a progress report with a change in program is also not sufficient notification.

In 2010, she transferred to the Everett Community College (ECC) to continue her prerequisite courses. She did not submit a formal request to modify her approved training plan, although she noted the change on a progress report she submitted on April 13, 2010. She did not maintain full-time continuous status in her training.

In April 2011, after ECC did not admit Raysbrook into its nursing program, she submitted a formal request to the Department to change her completion date to June 2013. At the same time, she stated her intention to reapply to the ECC nursing program. As a "backup," she applied to Western Washington University (WWU) to pursue a baccalaureate degree in human services, with the ultimate goal of becoming a certified counselor. She was not accepted to the ECC

nursing program and enrolled at WWU.

The Department issued two determination notices denying Raysbrook's requests for TB and to modify her CAT program to attend WWU for the following reasons. First, she failed to maintain full-time continuous status in her approved training program.¹ Second, she did not provide a definite training program, and pursuing a baccalaureate degree at WWU would not constitute an acceptable training program. Third, the Department would not provide benefits for a program before she was accepted, and she was not yet accepted to either ECC or WWU.²

An administrative law judge affirmed the Department's decision that Raysbrook was ineligible for both CAT and TB. The commissioner affirmed the administrative law judge's initial orders. Raysbrook appealed to Snohomish County Superior Court, which affirmed the commissioner's decision. Raysbrook appeals.

STANDARD OF REVIEW

The Administrative Procedure Act³ governs judicial review of a commissioner's decision.⁴ We review the commissioner's findings and decision.

¹ See WAC 192-270-040(1).

² See WAC 192-270-040(2) ("Prior to approval of your training plan, you must . . . [b]e preregistered for classes; and . . . [h]ave a starting date of training that is not more than one quarter or term away.").

³ Chapter 34.05 RCW.

⁴ RCW 50.32.120; Engbrecht v. Emp't Sec. Dep't, 132 Wn. App. 423, 427,

⁵ We do not review the superior court decision or the underlying administrative law judge's order.⁶ Although we review the agency's legal conclusions de novo, we give substantial weight to the agency's interpretation of the statutes it administers.⁷ We apply an error of law standard.⁸ We will not overturn an agency's legal determinations unless the agency engaged in an unlawful procedure or decision-making process, failed to follow a prescribed procedure, or erroneously interpreted or applied the law.⁹ A claimant for unemployment benefits bears the burden of establishing that the commissioner erred.¹⁰

Raysbrook does not challenge any of the commissioner's findings of fact. Therefore, we treat them as verities.¹¹

ANALYSIS

Raysbrook claims that she should receive CAT and TB while she pursues

132 P.3d 1099 (2006).

⁵ Engbrecht, 132 Wn. App. at 427 (citing Tapper v. Emp't Sec. Dep't, 122 Wn.2d 397, 405-06, 858 P.2d 494 (1993); Safeco Ins. Cos. v. Meyering, 102 Wn.2d 385, 390, 687 P.2d 195 (1984)).

⁶ Engbrecht, 132 Wn. App. at 427 (citing Tapper, 122 Wn.2d at 405-06).

⁷ Manke Lumber Co., Inc. v. Diehl, 91 Wn. App. 793, 802, 959 P.2d 1173 (1998) (citing Weyerhaeuser Co. v. Dep't of Ecology, 86 Wn.2d 310, 315, 545 P.2d 5 (1976)).

⁸ Engbrecht, 132 Wn. App. at 428; RCW 34.05.570(3).

⁹ Batchelder v. City of Seattle, 77 Wn. App. 154, 158, 890 P.2d 25 (1995) (quoting RCW 34.05.570(3)(c), (d)).

¹⁰ Jacobs v. Office of Unemployment Comp. & Placement, 27 Wn.2d 641, 651, 179 P.2d 707 (1947).

¹¹ Tapper, 122 Wn.2d at 407.

a bachelor's degree in counseling at WWU. She asserts that because a bachelor's degree in a counseling-related field is a prerequisite to becoming a certified counselor, the program meets specific requirements for certification under WAC 192-200-020(4) and RCW 50.22.155(1)(f)(iv)(B).¹²

Generally, an individual is eligible for unemployment benefits only if he or she is able and available to accept suitable work and actively seeks such work.¹³ But, under RCW 50.20.043, a claimant participating in a commissioner-approved training program can receive benefits.¹⁴ WAC 192-200-010(1)(a) defines "training" as a "course of education with the primary purpose of training in skills that will allow you to obtain employment." Training does not include "a course of education primarily intended to meet the requirements of a baccalaureate or higher degree."¹⁵

The commissioner may approve an academic training course if it meets "specific requirements for certification, licensing, or specific skills necessary for the occupation."¹⁶ The Department considers six factors when determining whether to approve an academic training program: (1) the claimant's plan for

¹² As of July 1, 2012, RCW 50.22.155(1)(f)(iv) replaced RCW 50.22.155(7)(d), although the relevant language is the same.

¹³ RCW 50.20.010(1)(c), .080; RCW 50.22.020(1).

¹⁴ Gaines v. Emp't Sec. Dep't, 140 Wn. App. 791, 801, 166 P.3d 1257 (2007).

¹⁵ WAC 192-200-010(2).

¹⁶ WAC 192-200-020(4).

completing the training; (2) the nature of the training facility and the quality of the training; (3) 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 the claimant intends to seek work; (4) whether there is an oversupply of qualified workers; (5) whether the claimant has the qualifications and aptitudes to successfully complete the training; and (6) whether the claimant's employment prospects in occupations in which he or she has training or experience do not exist or have substantially diminished in the labor market to the extent that the Department determines the claimant will probably be unemployed for a lengthy period.¹⁷

An individual pursuing "a course of study providing scholastic instruction" is generally disqualified from receiving unemployment benefits, unless he or she is in approved training under RCW 50.20.043 or demonstrates actual availability for work.¹⁸ This applies to a course of study at an institution of higher education.¹⁹ "Scholastic instruction" includes "all teaching or opportunity for learning subjects other than those of a strictly vocational nature."²⁰ The definition of "training" in WAC 192-200-010 embraces subjects "of a strictly vocational nature."²¹

¹⁷ WAC 192-200-020(3).

¹⁸ RCW 50.20.095; WAC 192-200-005.

¹⁹ WAC 192-200-005(4)(a).

²⁰ WAC 192-200-005(4)(b).

In his decisions, the commissioner recognized that academic courses might constitute “training” for the purposes of RCW 50.20.043 and that an academic program may provide the skills necessary for a desired field. He noted that the purpose of Title 50 RCW was neither to discourage claimants from attending school nor to subsidize scholarship, explaining, “It is simply the Act’s purpose to assist claimants involuntarily unemployed through no fault of their own.”²² But, he found that Raysbrook was pursuing “a course of education primarily intended to meet the requirements of a baccalaureate or higher degree.” The human services major constitutes less than half of the credits necessary to graduate. Thus, “[e]ven 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.” Accordingly, he concluded that the administrative law judge properly denied her request for CAT.

Raysbrook fails to establish that her education constitutes “training” for the purposes of RCW 50.20.043 or that it is “strictly of a vocational nature.” She does not show that the primary purpose of the WWU degree program is to provide training in skills to become a certified counselor. The degree requirements show, as the commissioner stated, that she will receive more than half of her credits outside her major. The primary purpose is to meet the

²¹ WAC 192-200-005(4)(b).

²² RCW 50.01.010.

requirements for a baccalaureate degree. Even if the program meets specific requirements for certification, it is not “academic training” under WAC 192-200-020(4) because it does not meet the applicable definition of “training” in WAC 192-200-010. She is pursuing an education providing scholastic instruction. Thus, the commissioner properly denied her modification request.

Raysbrook also requested TB while she attends WWU. An individual who is eligible for or exhausts entitlement to unemployment compensation benefits may receive TB under RCW 50.22.155. The individual must be unlikely to return to work in his or her principal field because of a diminishing demand for the individual’s skills in that field.²³

To receive TB, an individual must submit and the commissioner must approve an individual training program.²⁴ The individual must enroll and make satisfactory progress in that approved program.²⁵ Under RCW 50.22.155, a “training program” includes a “vocational training program at an educational institution that . . . [i]s targeted to training for a high-demand occupation.”²⁶ It 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

²³ RCW 50.22.155(1)(a)(i); RCW 50.04.075(1)(c).

²⁴ RCW 50.22.155(1)(b)(i).

²⁵ RCW 50.22.155(1)(c), (d); WAC 192-270-005(3).

²⁶ RCW 50.22.155(1)(f)(iv)(B)(I).

for the occupation.”²⁷ Certified counselors are a “demand occupation.”

The commissioner concluded that the administrative law judge properly denied Raysbrook’s TB request. Although he commended her “desire to further her education,” he stated that Raysbrook’s program at WWU was neither an education prerequisite for an approved vocational training nor a “‘vocational program’ at an educational institution” under RCW 50.22.155(f)(iv). “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.”

Raysbrook contends that the relevant statutory and regulatory provisions “do not detail what might be considered outside of the confines of ‘vocational nature’ for a particular training program.” She also argues that no authority states that work as a certified counselor is not work in a vocational field.

We construe different statutory provisions to give meaning to each and to avoid absurd or strained consequences.²⁸ We read them together “to determine legislative purpose in order to achieve a harmonious total statutory scheme . . . that maintains the integrity of the respective statutes.”²⁹ Even if, as Raysbrook

²⁷ RCW 50.22.155(1)(f)(iv)(B)(III); WAC 192-270-050(2).

²⁸ Lee Cook Trucking & Logging v. Dep’t of Labor & Indus., 109 Wn. App. 471, 481, 36 P.3d 558 (2001) (citing In re Eaton, 110 Wn.2d 892, 901, 757 P.2d 961 (1988)).

contends, a bachelor's degree constitutes a specific requirement to become a certified counselor, her program is not a vocational training program targeted to meet that career objective.³⁰ Again, to complete her course work, she will earn more than half of her credits outside her major. Because Raysbrook's program is merely a broad academic plan to obtain a bachelor's degree, the commissioner also properly denied her TB request.

In her reply brief, Raysbrook states that she is disabled and is also a military veteran. Although special provisions exist regarding TB for injured individuals and military veterans, we do not consider her argument because she raises it for the first time in her reply brief.³¹

Raysbrook also requests attorney fees under RCW 50.32.160, which governs unemployment compensation appeals, and RAP 18.1. Because she does not prevail, she is not entitled to attorney fees.

CONCLUSION

Raysbrook fails to demonstrate that she is pursuing a program targeted to training her to work as a certified counselor. She also does not prove that her

²⁹ Lee Cook Trucking & Logging, 109 Wn. App at 481 (alteration in original) (internal quotation marks omitted) (quoting Employco Pers. Servs., Inc. v. City of Seattle, 117 Wn.2d 606, 614, 817 P.2d 1373 (1991)).

³⁰ See RCW 50.22.155(1)(f)(iv)(B).

³¹ Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) ("An issue raised and argued for the first time in a reply brief is too late to warrant consideration." (citing In re Marriage of Sacco, 114 Wn.2d 1, 5, 784 P.2d 1266 (1990))); see also RAP 10.3(c).

course of education has the primary purpose of training her in skills to become a certified counselor. Because she is pursuing an education primarily to earn a baccalaureate degree, we affirm the commissioner's decision that Raysbrook is ineligible for either CAT or TB.

Leach, C. J.

WE CONCUR:

Schiveller, J.

Becker, J.