

0002 1718 87 (June 8, 2015) – Claimant in a 3-year masters in nursing program was ineligible for Section 30 benefits, because he would not complete his studies within 2 years. Even though the claimant would be eligible to become an R.N. and would, in fact, work part-time as a nurse after completing the first year and passing the standardized licensing examination, he would remain a full-time student rather than work full-time.

Board of Review
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Issue ID: 0002 1718 87
Claimant ID: 1874489

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA), denying an extension of the claimant's unemployment benefits while he participated in a training program. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

The claimant became separated from employment and filed a claim for unemployment benefits on September 8, 2011, which was eventually approved. On June 26, 2012, the claimant filed an application to DUA requesting an extension of benefits to attend a training program, which the agency denied on November 8, 2012. The claimant appealed that determination to the DUA hearings department. Following a hearing on the merits, attended by the claimant, the review examiner affirmed the agency's determination and denied training benefits in a decision rendered on March 19, 2013. We accepted the claimant's application for review.

Training benefits were denied after the review examiner concluded the claimant would not be able to complete his training program within two years, pursuant to G.L. c. 151A, § 30(c). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we remanded the case to the review examiner to take additional evidence regarding the claimant's training program. The claimant attended a remand hearing, as well as a second remand hearing which was scheduled to take testimony from an employee of the DUA Training Opportunities Program. However, the DUA staff did not participate at either remand hearing. Thereafter, the review examiner issued her consolidated findings of fact. Our decision, delayed by problems with the agency's conversion to its web-based computer system, is based upon our review of the entire record.

The issue before the Board is whether the review examiner's conclusion that the claimant was ineligible for training benefits because his program would not be completed within two years is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

The review examiner's consolidated findings of fact are set forth below in their entirety:

1. The claimant filed for unemployment benefits on 09/08/11 and became eligible for unemployment benefits after being separated from his employment; the claimant's benefit year expiration is 09/15/12.
2. On 06/26/12, the claimant applied for Section 30 benefits.
3. The program the claimant is currently enrolled in is called "The Graduate Entry Pathway" and is an accelerated Masters in Nursing program.
4. The accelerated program is at the University of Massachusetts (UMass) and is three years in total as participants will graduate with their R.N. and N.P. (Nurse Practitioner).
5. Because the program will not complete within two years, it was not approved by the Department of Unemployment Assistance (DUA) for Section 30 participation.
6. On 11/08/12, the DUA denied the claimant's application for Section 30 benefits.
7. The program began 08/13/12. The claimant's anticipated graduation date for the R.N. portion is 07/26/13. The claimant's anticipated graduation date for the N.P. portion is 06/17/15.
8. As of the date of the remand hearing, the claimant has completed 39 credits towards completing the program.
9. The courses the claimant has taken to date toward completing the program are: 510 Concepts in Prof Nursing (2 credits); 511 Biomedical Sciences I (5 credits); 513 Health Assessment/ Skills I (2 credits); 516A Acute/Chronic Theory I (5 credits); 516B Nsg I Acute/Chronic Clinical I (5 credits); Biomedical Sciences II (3 credits); Health Assessment/Skills II (1 credit); Nsg II Acute/Chronic Theory II (3 credits); Nsg III Child/Family Theory (5 credits); Nsg III child/ Family Clinical (3 credits).
10. Between 05/28/13 and 07/26/13 (his anticipated graduation date for the R.N. portion), the claimant will have to take 10 course credits: 519A and 519B.
11. For the Fall, 2012, semester, the claimant completed 19 course credits; for the Spring, 2013, semester, the claimant completed 20 course credits.
12. The claimant's anticipated program of study from the date of the remand hearing is to complete 10 course credits (519A and 519B).

13. The claimant is scheduled to qualify for the R.N. certification exam to become a registered nurse in September, 2013.
14. After completing the coursework to become a registered nurse, UMass will issue the claimant a Certificate of Completion of Pre-Licensure (R.N. Program).
15. After becoming a registered nurse, the claimant's program at UMass requires him to work full time while continuing school until he completes his program.
16. The program requires the claimant to complete 1000 hours of R.N. work (24 hours per week) by June, 2014.
17. The claimant is not able to work a full time schedule of hours while attending school.
18. The program requires the claimant to take 14 credits per semester.
19. The job placement rate for the program in which the claimant is currently enrolled is one hundred percent within four months of obtaining R.N. licensure.

The DUA Determinations § 30 Unit did not participate in the remand hearing and no testimony or evidence from them was established.

Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the consolidated findings of fact are supported by substantial and credible evidence; and (2) whether the review examiner's ultimate conclusion is free from error of law. After such review, the Board adopts the review examiner's consolidated findings of fact, except for Consolidated Finding of Fact # 15. We set aside that portion of Finding of Fact # 15, which incorrectly states the claimant is required to work full-time while continuing school after qualifying for his Registered Nurse license. This contradicts Consolidated Finding of Fact # 16, which correctly states the claimant is required to work 24 hours per week as an R.N. after passing his certification examination, which is not full-time employment. It also conflicts with Consolidated Finding of Fact # 17, which correctly states the claimant is not able to work a full-time schedule of hours while attending school. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence.

The review examiner's decision to deny the claimant's application for training benefits derives from G.L. c. 151A, § 30(c), which relieves claimants who are enrolled in approved training programs of the obligation to search for work, and permits extensions of up to 26 weeks of additional benefits. The procedures and guidelines for implementation of training benefits are set forth in 430 CMR 9.00-9.09. Under G.L. c. 151A, § 30(c), it is the claimant's burden to prove that he fulfills all of the requirements to receive a training extension.

The section of the regulations implementing G.L. c. 151A, § 30(c), applicable to this claimant's appeal is 430 CMR 9.05(2)(c), which states, in pertinent part, as follows:

Training programs must ... [b]e completed within two years, or within three years if the program combines Basic Skills¹ with vocational or industrial training....”

The agency initially denied the claimant's application for training benefits after concluding that he would not complete his master's degree program at the University of Massachusetts Medical School (UMMS) in Worcester within two years. The review examiner affirmed the disqualification. We remanded the case for additional evidence, including documentary evidence showing the claimant's academic progress and the nature and requirements of his program; as well as testimony from the DUA Training Opportunities Program regarding the job placement rate of the program.

After remand, the review examiner found that the claimant began his program on August 13, 2012. At the time of the remand hearings, the claimant anticipated completing the portion of his coursework that would enable him to sit for the certification examination to become a registered nurse on or about July 26, 2013. He planned to sit for the examination in September, 2013. Although successful completion of the certification would permit the claimant to work full-time as an R.N., the claimant's program did not include a plan to join the full-time work force after obtaining his R.N. license. Instead, the program required him to continue his studies at UMMS toward his master's degree and his nurse practitioner license. While undertaking the second part of his program, the claimant will be required to work part-time as an R.N. but will be unable to work a full-time schedule of hours while courses are in session. The claimant is scheduled to complete his studies at UMMS on June 17, 2015.

The claimant began his studies on August 13, 2012. He will not complete his studies until June 17, 2015, more than two years after he began the program. The three-year nature of the claimant's program is supported by the documentary evidence he provided from UMMS. *See* Remand Exhibits # 5, # 7, # 12, and # 16. We think it is consistent with the purposes of Section 30 to interpret “program” to mean the period of study that, by design, will be followed by re-entry into the full time work force, rather than a portion of the program that, by design, will be followed by further full time studies. The claimant's program, as designed, will not be completed within two years, as required by 430 CMR 9.05(2)(c). We, therefore, conclude as a matter of law that the claimant's program does not satisfy the requirements of G.L. c. 151A, § 30(c) and 430 CMR 9.00 *et seq.*

¹ 430 CMR 9.03 defines “Basic Skills” as “courses offering A.B.E., E.S.O.L., or G.E.D. preparation, either individually or in combination.” “A.B.E. (Adult Basic Education)” is defined as “academic training in basic literacy and numeracy skills. Such training may be geared at the primary or secondary school level. . .”

The review examiner's decision is affirmed. The claimant is not eligible to receive an extension of up to 26 times his weekly benefit rate while attending his program at the University of Massachusetts Medical School, pursuant to G.L. c. 151A, § 30(c).

BOSTON, MASSACHUSETTS
DATE OF DECISION - June 8, 2015



Paul T. Fitzgerald, Esq.
Chairman



Judith M. Neumann, Esq.
Member

Member Stephen M. Linsky, Esq. did not participate in this decision.]

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS STATE DISTRICT
COURT OR TO THE BOSTON MUNICIPAL COURT
(See Section 42, Chapter 151A, General Laws Enclosed)**

The last day to appeal this decision to a Massachusetts District Court is thirty days from the mail date on the first page of this decision. If that thirtieth day falls on a Saturday, Sunday, or legal holiday, the last day to appeal this decision is the business day next following the thirtieth day.

To locate the nearest Massachusetts District Court, see:
www.mass.gov/courts/court-info/courthouses

Please be advised that fees for services rendered by an attorney or agent to a claimant in connection with an appeal to the Board of Review are not payable unless submitted to the Board of Review for approval, under G.L. c. 151A, § 37.

JPC/rh