

0002 2648 26 (Dec. 19, 2013) – A claimant pursuing a bachelor’s degree program did not meet the regulatory requirement to be enrolled in a full-time training program, where he enrolled in classes totaling only seven credits in one semester and ten credits in the following semester.

**Board of Review**  
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**Issue ID: 0002-2648-26**

## **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 June 5, 2012, which was subsequently approved. On September 12, 2012, the claimant filed an application for an extension of benefits to attend a training program, which was denied in a determination issued on November 8, 2012. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by the claimant, the review examiner affirmed the agency’s initial determination and denied the training extension in a decision rendered on February 14, 2013. We accepted the claimant’s application for review.

The training extension was denied after the review examiner determined that the claimant would not complete his program within the time parameters of G.L. c. 151A, § 30(c), and 430 CMR 9.05(2)(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 participation in his training program, including corroborating his testimony with a copy of his academic records. Thereafter, the review examiner issued her consolidated findings of fact and credibility assessment. We remanded the case a second time to clarify her consolidated findings and to allow the claimant to submit updated copies of his academic records. Once again, the review examiner revised and issued further consolidated findings of fact. Our decision 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 pursuant to G.L. c. 151A, § 30(c), because his program could not be completed within two years, is supported by substantial and credible evidence and is free of 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 a new claim for benefits on 6/5/12 having been permanently separated from employment.
2. The claimant had received UI benefits for the weeks ending 6/16/12 to 11/3/12.
3. On 9/12/12, the claimant filed a Form 1622, "Training Opportunities Program Application", to attend a Bachelor of Law and Politics Degree program at Southern New Hampshire University. The claimant began this course of study on 9/5/12 while he was unemployed. His original Section 30 application slated the claimant to complete his degree on 1/1/15.
4. The claimant was attending the program full time. He is required to complete 120 credits for this degree. As of the date of the initial application on 9/10/12 he had already completed 54 credits toward the degree. As of the date of the revised application on 11/16/12 he had completed a total of 57 towards his degree as a result of the SNHU giving him credit for a prior course he had taken.
5. The claimant had taken some separate credit courses while in the Marines. Because of these additional courses he took while in the Marines the claimant expects to complete the program by 5/2/14.
6. At the [initial] hearing, the claimant submitted a revised Section 30 application with an anticipated completing [sic] date of 5/2/14.
7. While attending school during this time, the claimant was looking for work that would be compatible with his school schedule. He is currently working a part time job with a law firm.
8. The claimant has no prior history of working full time while attending school full time.
9. On 11/8/12, the claimant was issued a determination denying him approval under Section 30 because the training program would not be completed within two years. He was denied unemployment benefits under Section 24(b) of the Law for the week-ending 11/10/12 and indefinitely due to full-time attendance at school and his limiting his availability for work by only looking for work which would fit his class schedule.
10. An official transcript was offered by the claimant and entered as Remand Exhibit # 5.

11. As of the date of the [first] remand hearing the claimant had received 57 credits due to courses he took prior to registering at SNHU.
12. As of the date of the [first] remand hearing the claimant had earned 32 credits from SNHU.
13. As of the date of the [first] remand hearing the claimant is not enrolled in any courses. He is having difficulty with the summer courses because the courses being offered over the summer are courses he has already taken. SNHU is not offering any courses the claimant could take to go towards his degree.
14. The claimant provided an Academic Evaluation which shows his program of study. (Remand Exhibit # 6)
15. The revised application dated 11/16/12 which was remarked [sic] at [sic] Remand Exhibit # 8 was offered by the claimant to show his established graduation date of 5/2/14.
16. The claimant still anticipates completing the program and graduating on 5/2/14.
17. For the fall semester [2013] the claimant enrolled in the following courses: SNHU (404) General Education Capstone for 1 credit; Politics (317) for 3 credits; Politics (316) for 3 credits and Politics (314) for 3 credits.
18. During the spring semester the claimant plans to take the following courses; Math Applied Statistics (MAT 240) for 3 credits; Literature Course (200) for 3 credits; Institutional Course SNHU (404) for 1 credit; World History and Culture (HIS 301) for 3 credits and Capstone Colloquium (SCS 444) for 3 credits. The claimant still anticipates enrolling in these classes for the spring 2014 semester.
19. Once this course of study is completed it will bring the claimant to 112 credits.
20. The claimant is taking the Political Theory course now during the fall semester. He is expected to complete this course by 12/19/13. Once completed he will fulfill the 3 credit obligation.
21. According to the Program Summary in the updated Academic Evaluation [Remand Exhibit #12], the claimant has currently earned 89.00 Overall Credits. The claimant has 31.00 Overall Credits remaining to earn.
22. The claimant believes he is not required to fulfill the free elective under Section 2 of the Academic Evaluation because he has completed all free electives and is working on courses towards his degree. He is however

currently enrolled in SNHU (404) General Educations Capstone which when completed will fulfill the free elective requirement under Section 2 as indicated in the updated Academic Evaluation marked as Remand Exhibit 12.

23. The claimant has been informed that the World Legal Traditions (POL-326) as shown on Remand Exhibit # 6 Section 4 (A) is a course that is only offered every two years. He is working with his advisor to find a course that can be substituted.
24. The claimant has not currently fulfilled the LPO Electives as shown on Remand Exhibit # 6 Section 4 (B). He is currently enrolled in Campaigns and Electives for 3 credits; Legal Reasoning /Constitution for 3 credits. In addition the claimant already took the American Presidency course for 3 credits in 2010 for a total of 9 credits. The claimant has 6 remaining credits to take for the LPO electives under Section 4 (B) which he plans to take either online at the end of this semester in December or the spring 2014 semester. (see Remand Exhibit 12 Section 4 (B))
25. No additional testimony or evidence was offered by the claimant regarding outstanding courses and/or credit obligations.

#### Ruling of the Board

In accordance with our statutory obligation, we review the findings of fact made by the review examiner to determine: (1) whether these findings are supported by substantial and credible evidence; and (2) whether the review examiner's ultimate conclusion that the claimant is entitled to benefits is free from error of law. Upon such review, the Board adopts the review examiner's consolidated findings of fact and deems them to be supported by substantial and credible evidence. In addition, as will be discussed more fully below, we believe the review examiner's findings of fact support her legal conclusion that the claimant is ineligible for training benefits, pursuant to G.L. c. 151A, § 30(c).

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 retraining 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. We remanded the case twice to take additional evidence regarding various aspects of the claimant's training program and anticipated completion date, including updated copies of his official transcript and other course documents.

The review examiner initially denied the claimant's application for a training extension after concluding that the program into which he enrolled could not be completed within the deadlines set forth within the regulations providing guidance for implementing G.L. c. 151A, § 30(c). Specifically, 430 CMR 9.05(2)(c) indicates:

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

The review examiner initially found the claimant began a training program at Southern New Hampshire University (“SNHU”) on September 5, 2012. The claimant enrolled in SNHU’s Bachelor of Arts in Law and Politics degree program and filed an application for training benefits with DUA on September 12, 2012. SNHU originally informed DUA that the claimant would complete his program on January 1, 2015. *See* Hearings Exhibit #4 [renumbered Remand Exhibit #7].

Shortly after the claimant’s application was denied by DUA but prior to the initial hearing in this case, the claimant prepared a second application for training benefits on November 20, 2102. *See* Hearings Exhibit #4 [renumbered Remand Exhibit #7]. Here, SNHU indicated the claimant would complete his program on May 2, 2014.

We initially remanded this case because the review examiner’s analysis failed to explain why she accepted the contemplated completion date of January 1, 2015, rather than the revised completion date of May 2, 2014. Since we were remanding the case, we also provided the claimant with an opportunity to provide further testimony and evidence to support his contention that he could finish the program within two years. But the review examiner’s consolidated findings contained discrepancies that needed to be corrected prior to issuing a decision, so we remanded the case again to clarify these apparent discrepancies and to examine more rigorously the SNHU documents furnished by the claimant. Again, since we were remanding the case, we provided the claimant with another opportunity to provide testimony and evidence to support his contention that he could complete his program within prescribed deadlines. After two remand hearings, we conclude that the claimant has not met his burden.

After both remand hearings, the review examiner found that the claimant enrolled in his program on September 5, 2012. The program requires 120 credits to earn a bachelor’s degree. As of the date of the second remand hearing on October 2, 2013, the claimant had received 57 credits from courses he took before attending SNHU; he had earned 32 credits from SNHU; and he was enrolled in ten further credits during the Fall 2013 semester. For the Winter/Spring 2014 semester, the claimant anticipated taking 13 additional credits. The sum of all of these credits – achieved and contemplated – comes to 112 of the 120 needed by the end of the Winter/Spring 2014 semester. Despite the claimant’s apparently sincere desire to graduate on May 2, 2014, he will nevertheless still be 8 credits short of graduating by that date. The claimant proffered no additional testimony or evidence establishing how he will be able to complete all of these credits required to graduate on time and within the parameters of G.L. c. 151A, § 30(c), and its regulations. From this, we conclude that the claimant will not be able to complete his program of study within two years.

Review of the claimant’s most recent academic transcript and program of study shows the claimant also failed to satisfy the requirements of 430 CMR 9.05(2)(b)(1), which requires claimants enrolled in college programs to attend school full-time, meaning a minimum of 12 credits per semester. According to Remand Exhibit #11, the claimant only enrolled in classes totaling seven credits during the Winter/Spring 2013 semester, and only earned four of those

seven credits – far short of the 12 required by the regulations. Similarly, in Fall 2013, the claimant was only enrolled in classes totaling ten credits. From this, we conclude that the claimant was not enrolled full-time in his program.

The facts found by the review examiner and the evidence furnished by the claimant compel a conclusion that he will not be able to complete his program within the time constraints set forth in 430 CMR 9.05(2)(c), and that he was not enrolled full-time as required by 430 CMR 9.05(2)(b)(1). We, therefore, conclude as a matter of law that the claimant's application for extended benefits while enrolled in his training program at Southern New Hampshire University does not meet the standards and criteria set forth in G.L. c. 151A, § 30(c), and 430 CMR 9.01-9.09.

The review examiner's decision is affirmed. The claimant is not entitled to receive an extension of up to 26 times his weekly benefit rate under G.L. c. 151A, § 30(c).

Because the claimant is ineligible for training benefits while enrolled at SNHU and is also not able, available, and actively seeking full-time employment, he is ineligible for benefits while attending SNHU, pursuant to G.L. c. 151A, § 24(b). If there is a change of circumstances, the claimant may request a new determination.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - December 19, 2013**



Paul T. Fitzgerald, Esq.  
Chairman



Judith M. Neumann, Esq.  
Member

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS DISTRICT 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.

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