

**Board of Review
19 Staniford St., 4th Floor
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.
Chairman
Stephen M. Linsky, Esq.
Member
Judith M. Neumann, Esq.
Member**

**Issue ID: 0012 3255 24
Claimant ID: 2018582**

BOARD OF REVIEW DECISION

0012 3255 24 (Sept. 10, 2014) – Where a claimant can complete an associate's or bachelor's degree on a full-time basis within two years of filing a claim for benefits, the college is not required to meet the job placement rate requirement of 430 CMR 9.05(2)(a). The Board held the claimant was eligible for extended benefits under G.L. c. 151A, § 30(c).

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 she participated in a training program. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant became separated from employment and filed a claim for unemployment benefits effective as of February 17, 2013, which was eventually approved. On August 23, 2013, the claimant filed an application with DUA for an extension of benefits to attend a training program, which the agency denied on December 19, 2013. 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 the training extension in a decision rendered on February 12, 2014. We accepted the claimant's application for review.

The training extension was denied after the review examiner determined that, although the claimant's program was full-time, within the parameters of G.L. c. 151A, § 30(c), and 430 CMR 9.05(2)(b)(1), it did not meet the job placement requirements of 430 CMR 9.05(2)(a). 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 program and her progress in that program. The claimant attended the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact and credibility assessment. 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 the claimant did not establish that her program met applicable criteria for job placement, 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 present claim is effective February 17, 2013.
2. Between the Spring 1997 semester and the end of the Fall of 2012 the claimant had completed a total 62 credits at Roxbury Community College (RCC) of which 13 were developmental and the rest were for letter grade courses.
3. The claimant reapplied to RCC, for the Fall 2103 semester. She selected "Health Careers - to [RN]" as her major.
4. The claimant submitted a Training Opportunities (Section 30) Application, in relation to the Associates of Arts degree program at Roxbury Community College (RCC), on August 23, 2013.
5. Roxbury Community College did not provide any information regarding Annual Placement into Training Related jobs for an Associates of Arts degree program.
6. The Associate of Arts degree program required 64 credits. As of August 30, 2013, the claimant had completed 40 credits towards this program and needed an additional 24 credits to complete the program.
7. The Associates of Arts program began on September 4, 2013. She was expected to complete the program on May 17, 2014.
8. The claimant took 14 credits in the Fall 2013 semester. She successfully completed all of these credits.
9. On December 19, 2013, a Notice of Disqualification was issued under Issue Identification Number 0012 3255 24-01. This notice stated that the program could not be approved because it was not full time.
10. The claimant appealed the December 19, 2013 determination.
11. On February 6, 2014, a hearing was held regarding whether the claimant was entitled to Section 30 training benefits while attending the "Health Careers – to RN" program at RCC.
12. On February 12, 2014, a hearings decision was issues [sic] affirming the December 19, 2013 determination.
13. During the Spring 2014 semester, the claimant changed her major from "Health Careers - to [RN]" to "Health Careers".

14. On February 14, 2014 the RCC registrar completed a Training Opportunities application Section C for The Health Careers program at RCC in relation to the claimant's attendance in this program.
15. RCC believes the annual placement rate into training related jobs for the "Health Careers" program to be 70%.
16. The claimant expects to be able to get a job in an administrative health position upon completion of the "Health Careers" program.
17. The claimant's start date for the "Health Careers" program is the same as the start date for the "Health Careers – to RN" program, September 4, 2014 [sic].
18. The Health Careers program requires 64 credits to complete. As of February 14, 2014 the claimant had completed 54 of these credits.
19. The claimant needed to take 10 credits during the Spring 2014 semester to complete the Health Careers program. She took 13 credits. The claimant successfully completed all 13 of these credits.
20. As of May 12, 2014, the claimant's anticipated conferred graduation date was May 9, 2014. Her commencement ceremony is expected to take place on May 30, 2014.
21. The claimant appealed the February 12, 2014 hearings decision to the Board of Review.
22. On April 8, 2014, the Board of Review remanded the case to the original review examiner for the taking of additional evidence.
23. As of April 14, 2014, the DUA Trainings Opportunities Program considered the "Health Careers – to RN" Associate's degree program at RCC to be eligible for training benefits pursuant to G.L. c 151A, Section 30, so long as the student requesting the benefits is taking 12 credits per a semester (or a combination of credits and practicum) and 6 credits during the summer and completes the training within 2 years of the effective date of the claim.
24. The Training Opportunities Program does not require Training Vendors to register in Training Pro for credit based training programs. It was therefore unable to provide any information for the hearing regarding the job placement rate for the "Health Careers – to RN."

The review examiner provided a lengthy and detailed preamble to her consolidated findings of fact, which we regard to be her credibility assessment. It is set forth below in its entirety:

The DUA Training Opportunities Program was asked to provided evidence or testimony as to whether:

- 1) It currently recognizes the “Health Careers – to RN” associate’s degree program at RCC to be eligible for training benefits pursuant to G.L. c. 151A, section 30.
- 2) What the job placement rate for the “Health Careers – to RN” associate’s degree program at RCC is.

In response, a Training Opportunities Program representative provided an e-mail answering these questions. This e-mail was entered into the record as Remand Exhibit # 7. The claimant provided testimony and documentary evidence during the remand hearing which was also entered into the record. RCC did not provide “swore [sic] testimony” from an official representative of RCC who is authorized to make such statements on behalf of RCC regarding job [sic] the job placement rate for the “Health Careers to RN” program or this program’s placement rate. She did provide, with her appeal to the [B]oard of [R]eview a copy of a Training Opportunities application Part C providing an annual placement rate into training related jobs for the “Health Careers” program which was stamped by the RCC enrollment center. In addition she provided a letter, on RCC enrollment Center letterhead, signed by the RCC registrar, giving detailed information regarding the claimant’s enrollment status, completed credits and expected completion date, but no information regarding placement rates or how the 70% figure, on the Training Opportunities application Part C, for the Health Careers Program was arrived at.

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 are supported by substantial and credible evidence; and (2) whether the review examiner’s ultimate conclusion 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.

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 she fulfills all of the requirements to receive a training extension.

The agency initially denied the claimant’s application for a training extension after concluding that the claimant was not attending her program full-time. Specifically, 430 CMR 9.05(2)(b)(1) provides, in pertinent part, as follows:

Training programs must ... [b]e a full-time course, providing a minimum of at least 20 hours of supervised classroom training per week; provided, however, that: (1) if the program is offered by a community college, college, or university, this requirement shall be met if the program provides a minimum of 12 credits each semester or the equivalent; ...

After the claimant appealed the disqualification to the DUA Hearings Department, the review examiner found that the claimant enrolled in an associate's degree program at Roxbury Community College, where she had already earned 40 credits toward a 64-credit requirement prior to opening this claim for unemployment benefits. While the review examiner initially concluded that the claimant satisfied the requirement that she attend the program full-time, the review examiner concluded that the claimant's program did not satisfy the job placement requirements of 430 CMR 9.05(2)(a). We remanded for additional evidence regarding the claimant's progress in her program, and for evidence regarding her program's job placement rate.

In response to the Board's remand order, the DUA Training Opportunities Program indicated that it does not require schools with credit-based training programs to register in "Training Pro," the DUA website listing programs approved for training benefits; and that the job placement rate requirement is not required for credit-based training programs. Claimants enrolled in such programs must take a minimum of 12 credits per semester (or a combination of credits and practicum) and complete their programs within two years of the effective date of their claim. *See* Remand Exhibit # 7.

We take this opportunity to clarify the Board's position on the job placement rate requirement for students seeking training benefits while enrolled in degree programs at community colleges, colleges, and universities. Where a claimant can complete an associate's degree or a bachelor's degree on a full-time basis within two years of filing a claim for benefits, the college is not required to meet the job placement rate requirement of 430 CMR 9.05(2)(a). For claimants seeking training in certificate or non-degree programs, those programs must still satisfy the applicable job placement criteria of 430 CMR 9.05(2)(a).

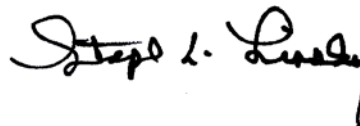
After remand, the review examiner found that the claimant completed 14 credits in the Fall, 2013 semester, 13 credits in the Spring, 2014 semester, had completed her coursework as of the May 12 remand hearing, and was scheduled for commencement shortly thereafter. Since the claimant's claim became effective February 17, 2013, the claimant participated in her program on a full-time basis and completed her program within two years of the effective date of her claim. We, therefore, conclude as a matter of law that the claimant's program and her work in her program satisfy the requirements of G.L. c. 151A, § 30(c) and 430 CMR 9.00 *et seq.*

The review examiner's decision is reversed. The claimant is entitled to receive an extension of up to 26 times her weekly benefit rate while attending this program, pursuant to G.L. c. 151A, § 30(c).

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 10, 2014



Paul T. Fitzgerald, Esq.
Chairman



Stephen M. Linsky, Esq.
Member



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