

0013 6292 93 (Jan. 20, 2015) – Where the claimant transferred from a liberal arts to a paralegal certificate program within the same educational institution, her program satisfied the requirement under 430 CMR 9.06(4), that a claimant participate in only one training program in a benefit year, because the courses she took while enrolled in the liberal arts program were also required for the completion of her paralegal program.

Board of Review
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Issue ID: 0013 6292 93
Claimant ID: 523367

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), to deny unemployment training benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant applied for unemployment training benefits with the DUA, which were denied in a determination issued on June 30, 2014. 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 benefits in a decision rendered on August 22, 2014. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant had enrolled in a new, non-full-time training program and, thus, was ineligible for unemployment training benefits, under 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 initially affirmed the disqualification. However, upon further consideration, we subsequently rescinded our decision and remanded the case to the review examiner to take additional evidence on the claimant's course schedule and the transferability of course credits that she earned in her prior degree program. The claimant attended the remand hearing. Thereafter, the review examiner issued her 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 is ineligible for training benefits because she enrolled in a new, non-full-time program 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 and credibility assessments are set forth below in their entirety:

1. On April 3, 2013, the claimant filed a new claim for unemployment benefits, claim identification number 2013-01. The effective date of the claim was March 31, 2013.
2. The claimant applied to the liberal arts program at a local community college and was accepted. The claimant began attending school on September 4, 2013 in pursuit of an Associate's Degree the liberal arts program.
3. The claimant decided to participate in the community college's Women in Transition program, which assists female students transition to the college setting and its academic rigors.
4. The claimant completed the student part of a Training Opportunity Program ("TOP") Application on August 30, 2013 and then provided it to the community college for completion.
5. The claimant submitted the TOP Application to the DUA after the college's part was completed by the Admissions Counselor. The [TOP] Application indicated the claimant was pursuing a degree in liberal arts, that she started the program on September 4, 2013 and that she would complete the program in May 2015. The TOP Application indicated the program consisted of 62 total credits. The TOP Application also indicated the claimant would take twelve or more credits per semester as well as some additional credits during the summer session.
6. The TOP Application did not mention anything about the Women in Transition program.
7. The TOP Application was received by the DUA on September 13, 2013.
8. The claimant had five classes for a total of 15 credits transferred to the community college from her prior attendance at another college, which included three credits in business communications. During the Fall 2013 semester, the claimant took classes at the community college, as follows:

Basic Keyboarding, 1 credit;
Career and Life Planning, 1 credit;
Assertiveness Training, 1 credit;
Medical Ethics, 3 credits;
Criminology, 3 credits; and
College Success Seminar, 3 credits.
9. On December 17, 2013, the Dean wrote a letter confirming the claimant was registered as a full time student for the Spring 2014 semester, lasting until

May 18, 2014. The claimant forwarded the letter to the TOP Unit postmarked December 17, 2013.

10. During the Spring 2014 semester, the claimant took classes at the community college, as follows:

Introductory Law for the Paralegal, 3 credits;
Litigation, 3 credits;
Introductory Psychology, 3 credits; and
Preparation for College Math, 4 credits.

11. On March 31, 2014, the claimant filed a new claim for unemployment benefits, claim identification number 2014-01. The effective date of the claim is March 30, 2014.
12. On April 16, 2014, the DUA TOP Unit issued the claimant a Notice of Approval under Section 30 of the law, indicating the claimant was approved for TOP benefits, including extended TOP benefits, during her attendance in the Liberal Arts Associate's Degree Program at the community college, for the fall semester of 2013.
13. On claim #2013-01, the claimant received regular unemployment [benefits] under the TOP benefit approval for the weeks ending September 14, 2013 through October 5, 2013. The claimant received TOP extended benefits on claim #2013-01 from January 4, 2014 through March 29, 2014.
14. On claim #2014-01, the claimant received regular Section 30 TOP benefits starting the week ending April 12, 2014, after the claim's wait week was served during the week ending April 5, 2014. The Section 30 TOP benefits ended as of the week ending May 17, 2014.
15. On May 19, 2014, the claimant transferred to the Paralegal program and stopped pursuing her liberal arts degree. The claimant made this decision in conjunction with her academic advisor, who felt the claimant's math skills were not adequate to allow her to complete the liberal arts degree in a timely manner.
16. On May 27, 2014, a new (second) TOP Application was submitted to the DUA by the claimant. The new TOP Application indicated the claimant was in the Paralegal Certification Program. The part of the TOP Application completed by the Admissions Counselor indicated the claimant was pursuing a Paralegal Certificate, which is a program consisting of 27 total credits. The new TOP Application stated that the claimant would be attending the program from May 19, 2014 through May 15, 2015.

17. The new TOP Application also indicated the claimant would take twelve credits during the Fall 2014 semester and nine credits during the Spring 2015 semester.
18. The claimant took a proficiency math class as a prerequisite during the summer session, from May 19 through June 26, 2014.
19. On June 30, 2014, the DUA issued a Notice of Disqualification indicating that the claimant was not approved for TOP benefits under Section 30 of the law because she was attending a second school program, as of May 19, 2014.
20. The school's Fall 2014 semester runs from September 3 through December 16, 2014. At the time of the remand hearing, the claimant was in process of taking classes for the Fall 2014 semester, as follows:

Information Technology and its Applications, 3 credits;
Legal Research, 3 credits;
Basic Criminal Law and Procedure, 3 credits; and
Real Estate Law, 3 credits.
21. The school's Spring 2015 semester runs from January 20 through May 11, 2015. At the time of the remand hearing, the claimant was registered for the upcoming semester, Spring 2015, as follows:

Legal Writing, 3 credits;
Family Law, 3 credits;
Computer Applications for the Law Office; and
Field Placement for Paralegals, 3 credits.
22. The Paralegal Certification Program requirements consist of six three-credit core classes, plus three classes chosen from a group of 3-credit electives. The Program also requires as a prerequisite communications proficiency and mathematics proficiency, which [may] be satisfied by testing or classroom credits. In the claimant's case, she completed classroom hours, as indicated above, for her prerequisites.
23. The core classes are all three credits; the six core classes are: Introduction to Law and Paralegal Practice, Legal Research, Litigation, Legal Writing, Information Technology and its Applications, and Computer Applications for the Law Office.
24. The elective classes are all three credits; the elective options are: Estates and Trusts, Real Estate Law, Business Organizations, or Paralegal Certificate Directed Electives.

25. Two classes from the claimant's Spring 2014 coursework were used towards her Paralegal Certification Program credits, Litigation and Introduction to Law for the Paralegal, consisting of six total credits.

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. However, as discussed more fully below, we do not believe the record supports the review examiner's legal conclusion that the claimant must be disqualified from receiving unemployment training benefits.

G.L. c. 151A, § 30(c), which governs the Training Opportunities Program, provides in pertinent part, as follows:

If in the opinion of the commissioner, it is necessary for an unemployed individual to obtain further industrial or vocational training to realize appropriate employment, the total benefits which such individual may receive shall be extended . . . if such individual is attending an industrial or vocational retraining course approved by the commissioner; provided, that such additional benefits shall be paid to the individual only when attending such course and only if such individual has exhausted all rights to . . . benefits under this chapter . . . provided, further, that such extension shall be available only to individuals who have applied . . . no later than the fifteenth week of a . . . claim but the commissioner shall specify by regulation the circumstances in which the 15 week application period shall be tolled . . . such circumstances shall include . . . any period in which economic circumstances permit the provision of extended benefits or any other emergency benefits funded in whole or in part by the federal government . . .

The review examiner's decision to deny the claimant unemployment training benefits is premised on the legal conclusion that the claimant's paralegal certificate program was a "new" training program in violation of 430 CMR 9.06(4), which requires claimants to participate in "only one training program in a benefit year." However, this conclusion is not supported by substantial evidence. The Board held in Issue ID 0002 4069 69 (Nov. 25, 2013) (included in the case file from the original hearing as an unmarked exhibit) that a claimant who remained at the same educational institution during her training period but thereafter changed academic programs could still be eligible for training benefits, where courses taken during the first training program were required for completion of the second training program. We concluded in that case that this was not a "new" or "different" training program and, therefore, did not violate 430 CMR 9.06(4).

In the case before us today, the claimant is in a similar set of circumstances, as she transferred to a different academic/vocational program within the same educational institution. The record reflects that courses that the claimant took during the Spring, 2014 semester while she was enrolled in the liberal arts program (courses such as "Introductory Law for the Paralegal" and

“Litigation”) were also required for the completion of the paralegal certificate program. *See* Consolidated Findings of Fact # 22-23 and # 25, and Exhibits # 12 and # 13. Thus, the review examiner’s conclusion that the paralegal certificate program was a “new” training program in violation of 430 CMR 9.06(4) is not supported by substantial and credible evidence.

The review examiner also noted in her decision that the claimant’s paralegal certificate program was not full-time, as the claimant was only scheduled to take 9 course credits during the Spring, 2015 semester. It is well-established that a “full-time” degree program must provide 12 credits each semester or the equivalent. *See* 430 CMR 9.05. We remanded the case to take additional evidence on the claimant’s course and credit schedule, as she asserted on appeal to the Board that, at the time of the original hearing, she had not fully established her Spring, 2015 course schedule. The record before us after remand shows that the claimant is taking at least 12 credits in the Fall, 2014 semester and is expected to take at least 12 credits in the Spring, 2015 semester as well, which will be the claimant’s final semester in the program.¹ *See* Consolidated Findings of Fact # 20 and # 21, and Remand Exhibit # 6. Thus the record reflects that the claimant’s program is full-time for each semester.

Under these circumstances, the review examiner’s decision must be reversed. The claimant is entitled to receive unemployment training benefits as of May 19, 2014, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - January 20, 2014



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 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.

¹ We note that the review examiner’s Consolidated Finding of Fact # 21 fails to assign a course credit number to the Spring, 2015 “Computer Applications for the Law Office” course. However, the claimant’s academic transcript (Remand Exhibit # 6) indicates that this course constitutes three course credits, which, when combined with the claimant’s remaining nine credits that she is scheduled to take during that semester, reaches the minimum 12 credit threshold required, under 430 CMR 9.05.

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.

AM/rh