

0014 0406 76 (Mar. 4, 2015) – The claimant’s continuing subsidiary part-time employment did not render her ineligible for training benefits under G.L. c. 151A, § 30(c). The program satisfied the full-time training requirement, where the claimant was required to engage in 120 hours of field work in addition to her credit hour coursework.

**Board of Review**  
**19 Staniford St., 4<sup>th</sup> 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: 0014 0406 76**  
**Claimant ID: 42464**

## **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 September 15, 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 October 30, 2014. We accepted the claimant’s application for review.

Benefits were denied after the review examiner determined that the claimant had not become permanently separated from her employment 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 remanded the case to the review examiner to take additional evidence on the claimant’s subsidiary employment and the specific course and credit requirements of her training 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 unemployment training benefits because she did not become permanently separated from her employment 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. The claimant filed a new claim for benefits on 4/22/14 after having been permanently separated from her full time employment. The effective date of the claim is 4/20/14.
2. The claimant had been working as an on call paraprofessional with a subsidiary employer during her base period.
3. The claimant was determined to be eligible and began receiving [unemployment] benefits.
4. On 9/4/14, the claimant entered North Shore Community College as a full time student for the Developmental Disabilities Direct Support program. She is slated to complete the program in July 2015.
5. The claimant is enrolled in 12 course credits during the fall of 2014 semester. She is taking Intro to Developmental Disabilities, Human Service Worker, Music and Healing and Speech all for 3 credit hours each. (Remand Exhibit 5)
6. The claimant is expected to enroll in 9 credit course hours during the spring of 2015. She will be taking Field Placement and Seminar I in Developmental Disabilities, Helping Skills in Human Services and Composition I all for 3 credit courses. (Remand Exhibit 6)
7. In the summer of 2015 the claimant is expected to enroll in 6 credit courses. She will be taking Developmental Disabilities: Special Topics and Introduction to Psychology, for 3 credits each. (Remand Exhibit 7)
8. The claimant will also be enrolled in a Field Study Program where she will need to complete 120 hours in professional field work. The contract states that she will be required to work 8 hours a week in a field related job. The course begins 1/20/15 but the teacher had allowed the claimant to start early to fulfill the number of hours on time.
9. The claimant is using her position as an on call substitute to fulfill her field work requirement. Her teacher just approved her use of the on call work to fulfill the requirement starting in December of 2014. Currently she had completed 16 hours. The claimant is still being compensated for the on call work.
10. The claimant did not apply for Section 30 benefits until 7/23/14.
11. The claimant went to the local office and was told she should apply for Section 30 at that time.

12. When the claimant applied for Section 30 she was working part time for another employer. She continues to work for this employer on an on call basis as a substitute.
13. The DUA issued the claimant a denial of her Section 30 application on 9/26/14 because she is still employed. The claimant appealed the decision.

### 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 erred in concluding that the claimant's continuing on-call employment for her subsidiary employer precludes her from being eligible for unemployment training benefits. We note that an employee who separates from primary base-period employment and continues to work for a part-time subsidiary employer in an on-call capacity during the benefit year could be eligible for unemployment benefits in any week in which she receives no work, based on the wages of the primary base-period employer. *See Town of Mattapoisett v. Dir. of Division of Employment Security*, 392 Mass. 546 (1984). Since unemployment training benefits are simply regular unemployment benefits that waive the work-search and availability requirements and, under certain circumstances, can be extended for up to 26 weeks, the *Mattapoisett* principle should be no different in these circumstances. We are aware of no authority holding that a claimant who has become permanently separated from his or her primary base-period employment would be barred from receiving unemployment training benefits, under G.L. c. 151A, § 30(c), because of ongoing subsidiary on-call employment. *Cf. Cadet v. Comm'r of*

Division of Unemployment Assistance, No. 11-P-182, 2011 WL 6820190 (Mass. App. Ct. Dec. 29, 2011, summary decision pursuant to rule 1:28) (the only issue in Cadet was the claimant's benefit rate, not the claimant's *entitlement* to unemployment training benefits, under G.L. c. 151A, § 30(c), even where he continued to work in an on-call capacity for a subsidiary employer while enrolled in an approved full-time training program). Therefore, we conclude that the claimant was "permanently separated from work," within the meaning of 430 CMR 9.04.

We also note that the review examiner's original findings of facts suggested that the claimant's program was not "full-time," within the meaning of 430 CMR 9.05, which requires degree programs approved under G.L. c. 151A, § 30(c), to provide at least 12 course credits or the equivalent each semester. The consolidated findings of fact after remand reflect that the claimant took 12 course credits during the Fall, 2014 semester. While the consolidated findings of fact indicate that the claimant was only expected to enroll in nine course credit hours during the Spring, 2015 semester, the review examiner also found that the claimant intended to enroll in six additional course credit hours during the Summer, 2015 term, and she was also required to complete a 120-hour professional field work placement starting in the Spring, 2015 semester. It is well-established that a degree program offering fewer than 12 course credit hours in a semester can still be considered "full-time" if there is another required component to the degree program outside of earned classroom credit hours that, when combined with the classroom hours, is "equivalent" to taking 12 total credit hours each semester. *See Figueroa v. Dir. of Department of Labor and Workforce Development*, 54 Mass. App. Ct. 64 (2002) (the claimant was enrolled in only 9 credit hours during a semester, but was also required to train for 20-30 hours per week in a computer lab during that semester, and therefore met the requirement of 430 CMR 9.05(2) by taking "12 credits each semester or the equivalent"). *See also* BR-106513 (May 5, 2008) (the claimant had a required 120-hour clinical placement on top of courses that totaled fewer than 12 credit hours in a semester). Here, the claimant's 120-hour field work placement in the Spring, 2015 semester, combined with her nine course credit hours that semester and the additional six course credits that she is projected to earn in the summer, certainly meets the "full-time" requirement, as contemplated by 430 CMR 9.05.

The review examiner's decision is therefore reversed. The claimant is entitled to receive unemployment training benefits, under G.L. c. 151A, § 30(c).

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - March 4, 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 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.

AM/rh