

0018 3639 73 (Nov. 30, 2016) – Claimant, who enrolls as a full-time student for the first five of six academic terms, satisfied the requirements of G.L. c. 151A, § 30(c), during terms when he was enrolled full-time. Where claimant anticipated a part-time class schedule during his last semester because that is all that remained to fulfill graduation requirements, he would not be eligible for training benefits during that term.

**Board of Review**  
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**Issue ID: 0018 3639 73**

## **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 reverse.

The claimant became separated from employment and filed a claim for unemployment benefits on March 6, 2016, which was eventually approved. On March 19, 2016, the claimant filed an application with the DUA for an extension of benefits to attend a training program, which the agency denied on April 1, 2016. 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 initial determination and denied training benefits in a decision rendered on May 4, 2016. We accepted the claimant's application for review.

Training benefits were denied after the review examiner concluded that the claimant did not provide substantial and credible evidence to establish that he could complete his training program within two years, and, thus, he did not meet all of the requirements to receive training benefits, pursuant to G.L. c. 151A, § 30(c) (hereinafter referred to as Section 30). 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 for additional evidence regarding the claimant's training program. The claimant participated in the remand hearing, along with a representative from his training program. 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 because he could not complete his chosen program 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 and credibility assessment are set forth below in their entirety:

1. Prior to filing his unemployment claim, the claimant most recently worked full time as a ship safety mechanic for the United States armed forces, from which he separated permanently on March 6, 2016.
2. The claimant filed for unemployment benefits with the Department of Unemployment Assistance (DUA) effective March 6, 2016.
3. Later in March 2016 the claimant enrolled full time in a bachelor's degree program in finance and accounting management (Program) at a university based in [City A], MA (School).
4. At the time the claimant enrolled, the School operated not on a traditional semester system, but rather a schedule of compressed "quarters" that occur four (4) times per year for twelve (12) [sic] rather than two (2) times per year [sic].
5. The Program requires students to complete one-hundred and sixty-three (163) "quarter hours" to obtain a degree.
6. The School deems students taking twelve or more quarter hours to be full-time.
7. The claimant applied for transfer credits from the School, which applied a total of seventy-one (71) quarter hours towards his degree. This left ninety-two (92) remaining for the claimant to complete.
8. The claimant and one of the School's advisors (Representative) filled out an application (Application) for the DUA's Training Opportunities Program (TOP).
9. Training programs approved by the DUA are assigned a code called a "Training PRO/MOSES Course ID #."
10. The claimant's Application does not include any approval code or course ID # for the Program.
11. The claimant submitted the Application postmarked March 19, 2016, which was the last day of his first compensable week under his DUA claim.
12. As of June 28, 2016, the claimant is currently attending the School's Spring, 2016, semester which began on April 11, 2016.

13. The claimant is taking two (2) twelve-week courses and four (4) accelerated six-week courses which he takes two at a time over the course of the quarter, for three (3) quarter hours each. He also attends one (1) quarter-long writing “lab” course for one quarter hour.
14. As of June 28, 2016, the claimant has completed six (6) quarter hours by finishing his first two accelerated six-week courses.
15. The claimant is still in progress towards earning thirteen (13) quarter hours by the end of the Spring 2016 semester, which will give him a total of nineteen (19) since starting attendance in the Program.
16. The claimant has registered for five (5) courses for a total of sixteen (16) quarter hours being offered for the Summer 2016 semester: Managerial Accounting (3), Macroeconomics (4), Statistics 2 (3), Writing for Professionals (3), and Business Ethics (3).
17. As of the Fall, 2016, semester, the School is changing over to a semester system where each semester will be fifteen (15) weeks rather than the twelve-week quarters and classes will be counted in semester hours.
18. The Program will require students to complete one-hundred and twenty (120) semester hours to complete the Program and receive a degree. Any quarter hours earned prior to the changeover will be converted to semester hours at a rate of .75 (*i.e.* 1 quarter hour = .75 semester hours).
19. The School will consider students taking twelve or more semester hours to be full-time.
20. The claimant has not registered for any classes after the Summer, 2016, semester as they are not available for registration yet.
21. Should the claimant successfully complete the Spring, 2016, and Summer, 2016, semesters, he will have a total of one-hundred and six (106) quarter hours or seventy-nine and one-half (79.5) semester hours.
22. The claimant’s advisor recommends the claimant take four (4) courses for three (3) semester hours each in the Fall, 2016, semester: Foundations of Psychology, Financial Reporting 1, and Introduction to Corporate Finance, and an unidentified class which must satisfy the School’s “diversity” requirement. Such classes are on the schedule for the Fall, 2016, semester.
23. The claimant’s advisor recommends he take approximately four (4) courses for twelve to thirteen (13) semester hours for the Spring, 2017, semester: Financial Reporting 2 (3), Cost Accounting (3), Investment (3), and an unidentified elective. It is unknown if these classes will in fact be offered during the Spring, 2017, semester.

24. The claimant's advisor recommends he take approximately four (4) courses for twelve to thirteen (13) semester hours for the Summer, 2017, semester: Working Capital Management (3), Business Strategy (3), and two unidentified electives. It is unknown if these classes will in fact be offered during the Summer, 2017, semester.
25. The claimant's advisor recommends he take two (2) courses for six (6) credits during the Fall, 2017, semester as this is all that is required to complete his degree at that time. The recommendations include two unidentified electives. It is unknown which classes the claimant will sign up for or which classes will be offered during the Fall, 2017, semester.
26. Should the claimant complete those semesters as recommended, he will obtain 121.5 semester hours as of the end of the Fall, 2017, semester during approximately the week ending December 23, 2017, and complete his degree. The claimant's degree would then be conferred in January, 2018.
27. The Program does not require the claimant to complete any cooperative work placements, internships, or other extracurricular participation to complete his degree.

#### CREDIBILITY ASSESSMENT:

The Representative testified during the hearing that the claimant's advisor had recommended he take two courses for six credits during his final semester in Fall, 2017, adding that the two electives were in fact required for the claimant to complete his degree. The claimant himself then confirmed that, while he was unsure if it would be in Fall, 2017, as recommended or in Summer, 2017, instead, he would be attending part time during at least one semester of the Program.

#### 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. 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 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 regulations that govern training benefits establish both procedures and standards for approving training programs themselves, as well as the eligibility criteria for claimants seeking to participate in such programs. *See* 430 CMR 9.01. The procedures and standards for approving training programs are enumerated in 430 CMR 9.05. The case before us presents two issues: whether the claimant can complete his degree within the time frame contemplated by the regulations, and whether he will participate in his degree program on a full-time basis.

**A. Can the claimant finish the program within two years?**

The review examiner's initial decision denied training benefits because he was not persuaded that the claimant could complete his program by the end of the fall, 2017, semester, meaning the claimant did not establish that he could earn his degree within two years. Pursuant to 430 CMR 9.05(2)(c), "Training programs must . . . (c) Be completed within two years, or within three years if the program combines Basic Skills with vocational or industrial training . . . ."

The review examiner found that the claimant separated from employment with a branch of the U.S. armed forces and filed for unemployment benefits on March 6, 2016. He enrolled in a program to obtain a bachelor's degree in Finance and Accounting Management at Northeastern University (the school) shortly thereafter in March, 2016. The claimant had previously earned college credits at other institutions, many of which the school was able to apply to this degree program.

In response to the Board's remand order, the claimant produced an official copy of his academic transcript from the school (Remand Exhibit # 5), a copy of his Degree Audit (Remand Exhibit # 7), and a copy of a Potential Class Schedule for his graduation plan, which he developed with his advisor (Remand Exhibit # 9). He also secured the participation of a representative of the school, who provided sworn testimony regarding the transfer credits accepted by the school, the progress made by the claimant to date in his program, the course of study he will require in order to complete his degree, and the claimant's anticipated completion date for his degree.

Our remand order noted that, beginning with the fall, 2016, term, the school planned a conversion from a "quarter-based" system to a "semester" system. Prior to the remand hearing, the claimant also provided a conversion chart used by the school in synthesizing the two approaches for the students whose enrollment bridges the two systems. *See* Remand Exhibit # 8.

After remand, the review examiner found that the claimant's degree initially required 163 "quarter hours" to complete. After the conversion, he will require 120 semester hours to earn his degree. The school considers students to be full-time when they take 12 "quarter hours" as well as when they take 12 "semester hours." The review examiner found that, as long as the claimant completes his course work on the schedule he has planned with his advisor, he will complete his program at the end of the fall, 2017, semester, and his degree will be conferred in January, 2018. We, therefore, conclude as a matter of law that the claimant will be able to complete his program and earn his degree within two years, pursuant to 430 CMR 9.05(2)(c).

**B. Will the claimant attend his program on a full-time basis?**

In order to qualify for training benefits, a claimant must also demonstrate that he will attend his program on a full-time basis. Pursuant to 430 CMR 9.05(2)(b)(1):

Training programs must ... (b) Be 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 remand, the review examiner found that the claimant anticipated completing 19 “quarter hours” by the end of the spring, 2016, term. He anticipated completing 16 “quarter hours” during the summer, 2016, term. By the end of the summer, 2016, term, the claimant will have earned 79.5 semester hours toward the 120 that he needs to graduate, with 40.5 more semester hours to complete.

Going forward, the review examiner found the claimant anticipated taking four courses for 12 credits during the fall, 2016, semester, four courses for 12 or 13 credits during the spring, 2017, semester, four courses for 12 or 13 credits during the summer, 2017, semester, but only two courses for six credits during his final semester in fall, 2017. Thus, the claimant would be in school full-time for five of the six terms during his program but would be a part-time student for his sixth term.

The DUA’s Section 30 regulations at 430 CMR 9.05(2)(b)(1) require that a claimant attending a degree program at a community college, college, or university must be enrolled on a “full-time” basis of at least 12 credits per semester. The question presented here is whether this provision requires a claimant to take the minimum 12 credits for all academic terms in his program, even for those terms when he is not claiming and/or not eligible for training benefits. We conclude that it would be more consistent with the purpose of the training benefits statute to interpret the regulation to allow training benefits during academic terms when a claimant is enrolled on a full-time basis, while disallowing those benefits during any term in which the claimant is enrolled in less than a full-time course load, than it would be to deny training benefits for the entire program just because a portion of the program includes less than full-time enrollment.

At the outset, we note that the contemplation of Section 30 benefits to complete college degrees arose during the recent recession, when regulations were amended in 2009 to extend the maximum training period from one to two years.<sup>1</sup> See 430 CMR 9.05(2)(c). This particular amendment had the practical effect of allowing claimants to begin and complete associate degree programs or to complete associate or some bachelor’s degree programs they may have previously begun but had not yet finished. Board decisions in cases arising after the 2009 amendments also relaxed the job placement rate requirements of 430 CMR 9.05(2)(a) for students in college and university degree programs.

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<sup>1</sup> A program may be completed within three years if it combines basic skills with vocational or industrial training. See 430 CMR 9.05(2)(c).

The issue before us today began to arise when claimants who had previously begun college programs sought to apply transfer credits to complete the degrees that they started earlier. Thus, in the instant case, as in other such cases, the student-claimant can take fewer than the Section 30-mandated 12-credit minimum during the last semester of his program to graduate. A similar situation arises when student-claimants try to accelerate their programs by taking more classes in earlier terms, leaving fewer classes during their last term.

The central purpose of G.L. c. 151A, § 30(c), is to assist unemployed workers in obtaining the training that they need to return quickly to the workforce in a job that is economically viable. Thus, the training program itself must be completed within two years. 430 CMR 9.05(2)(c). The Section 30 training program is a function of the unemployment compensation system, in which benefits (generally speaking) are limited to individuals who are able and available for full-time work. Since attendance in a collegiate training program is a substitute for such full-time work, the regulations also, appropriately, require full-time enrollment. In turn, while enrolled in a full-time program, claimants are relieved of the otherwise universal requirement that they be able, available for, and actively seeking full-time work. 430 CMR 9.07(2); G.L. c. 151A, § 24(b) (hereafter referred to as Section 24(b)).

This reciprocity between full-time enrollment and relief from the availability and work search criteria for unemployment benefits is of little consequence where the claimant is not eligible for or claiming benefits. We note that, when the regulations were amended to expand the permissible training period from one to two years, there was no parallel amendment to extend paid training benefits for the duration of those two years.<sup>2</sup> Claimants remain limited to a maximum of 26 additional weeks of training benefits after exhausting their initial 30 weeks of regular benefits. For a student-claimant who will complete a degree within two years, this means he essentially receives unemployment compensation for only his first 13 months after filing for unemployment. For the remainder of his program, he cannot claim benefits and hence does not need a waiver of the “able, available, and actively seeking” requirements that apply to benefits recipients. This disparity between the potential two-year duration of an approved college program and the much more limited duration of unemployment compensation weakens the statutory symmetry between full-time school attendance and the full-time “availability” requirement, because so many claimants will have several weeks of required course work remaining when they are no longer eligible for benefits.

We acknowledge that the full-time attendance requirement also promotes another statutory goal, which is to expedite the claimant’s return to the work force by encouraging students to complete their programs as quickly as possible. But this goal fits uneasily with college programs. For example, a claimant may be unable to attend full-time during a particular time period because required courses may not be offered. The regulations contemplate this situation to a certain extent with regular “breaks” in the college curriculum. 430 CMR 9.08 provides that claimants may be paid benefits (presumably without meeting the Section 24(b) availability requirement) during such “breaks” as “pre-scheduled breaks within a semester, for holidays, and breaks

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<sup>2</sup> The amendments extended the number of weeks that a claimant may receive training benefits from 18 to the current 26 weeks, not two years.

between semesters “that do not exceed three weeks.”<sup>3</sup> Additionally, we note that, apart from Section 30 training programs, a claimant who attends school on a part time basis will not be disqualified from regular benefits if he can establish that he is still meeting the Section 24(b) requirements. However, these remedies fail to address the issue at hand.

It seems to follow from the fact that Section 30 benefits may expire before a claimant has completed his training program, and the fact that the claimants are not denied program approval just because they cannot attend full time in the summer, that where, as here, a claimant has taken a full course load for five terms, but only needs to attend part time during his final term, he should not have his entire program disapproved. Instead, it is more consistent with the statutory purposes to approve the program overall, but deny eligibility for benefits during such part-time enrollment unless the claimant qualifies for regular benefits and meets the availability requirements of Section 24(b). This approach will ensure that benefits are paid only while a student is enrolled in courses that are actually necessary to complete his program, and it will discourage claimants from taking superfluous courses solely to satisfy the minimum number of credits needed to qualify to receive training benefits.

Our decision today addresses a question unresolved in one of our previous decisions, where a claimant was disqualified from training benefits because she planned to enroll in only nine credits in two of the three semesters for which she sought training benefits. *See* Board of Review Decision 0013 0771 95 (November 25, 2015) (denying training benefits to a claimant who planned to attend two semesters on a part-time basis, with a break for summer semester).<sup>4</sup> In that decision, we upheld the longstanding threshold of a 12-credit minimum for college students to be considered full-time to qualify for training benefits. In doing so, we rejected the argument that a program offering 12 credit hours per semester warranted approval, where the claimant failed to avail herself of those offered 12 hours, and similarly reject the argument that credits earned from prior coursework should be applied during a term when she was not actually taking a full-time course load just to satisfy Section 30. But this prior decision did not squarely address the issue of whether a claimant who pursues his college degree on a full-time basis as much as he can should be entirely disqualified for training benefits because he needs less than a full-time schedule of classes during his last term to graduate, especially since he will have exhausted all regular and training benefits by that time.

We further note that the Board has previously conferred training benefits on claimants who were not full-time students for the entirety of their training program. *See* Board of Review Decisions BR-116321 (March 8, 2011) (denying training benefits for two semesters in which a claimant attended school on a part-time basis, but restoring training benefits during the one semester when she attended on a full-time basis); and BR-119610 (July 26, 2012) (declining to penalize a claimant for not taking courses that otherwise would be superfluous or irrelevant to her degree program, when she only needed six credits during her final summer semester).<sup>5</sup>

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<sup>3</sup> In circumstances where colleges may not offer full-time courses during the summer or other break periods, a claimant may still be eligible for regular benefits, so long as they satisfy all of the requirements of 24(b). However, the claimant still must be able to finish their training program within two years. 430 CMR 9.05(2)(c).

<sup>4</sup> Board of Review Decision 0013 0771 95 is an unpublished decision, available upon request. For privacy reasons, identifying information is redacted.

<sup>5</sup> Board of Review Decisions BR-116321 and BR-119610 are also unpublished decisions.



Today's decision upholds the longstanding requirement that, in order to be considered a full-time student who is eligible for training benefits, a claimant undertaking a degree program in a college, community college, or university must take 12 credits per semester. Claimants may jeopardize their eligibility for benefits if they enroll in superfluous classes, unrelated to their program of study and unnecessary to fulfil the requirements of their degrees, solely for the purpose of appearing to be "full-time" students for the purpose of obtaining training benefits. But a claimant who is enrolled full time to the extent courses are available and necessary, and who will complete their programs within two years, will be eligible for those benefits even if, at some point, they will attend part-time. During any such part-time enrollment, the claimant would become ineligible for training benefits, except where he has not exhausted regular benefits and meets the requirements of G.L. c. 151A, § 24(b).

Here, the claimant has worked closely with university administrators to plot his program of study so that he could finish his degree within two years. Prior to the remand hearing, the claimant provided all of the documents requested by the Board to corroborate his ability to complete his degree within two years. One administrator provided sworn testimony during the remand hearing, at which the university's counsel also appeared. We, therefore, conclude as a matter of law that, while he is enrolled as a full-time student, the claimant satisfies 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 his weekly benefit rate *while* attending this training program on a full-time basis, pursuant to G.L. c. 151A, § 30(c), if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - November 30, 2016**



Paul T. Fitzgerald, Esq.  
Chairman



Judith M. Neumann, Esq.  
Member

Member Charlene A. Stawicki, 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](http://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