

**Claimant's § 24(b) obligations are waived during the week in question, because she was continuing to attend a Section 30 program. Although the approval had temporarily lapsed, it was subsequently redetermined to be applicable to the week in question.**

**Board of Review  
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**Issue ID: 0019 3934 45**

## **BOARD OF REVIEW DECISION**

### **Introduction and Procedural History of this Appeal**

The claimant appeals a decision by Krista Tibby, a review examiner of the Department of Unemployment Assistance (DUA), to deny unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant was separated from employment and filed a claim for unemployment benefits with the DUA on October 9, 2015. She submitted an application for training benefits (TOPS) with DUA on January 5, 2016, for a full time associate's degree program at a community college in Biotechnology and Compliance, which was approved by notice issued on January 9, 2016. The Notice of Approval stated under "Reasoning and Findings" that the claimant was "granted a waiver of the work search requirements." Under "Important Information," the Notice stated:

You are approved for Training Opportunities Program benefits while attending the Biotechnology and Compliance Associate's degree at Quincy College. You will receive a work search waiver while receiving Regular benefits and an extension of up to 26 weeks when your regular benefits exhaust. You may receive the waiver and benefits while collecting on your 2015 Unemployment Insurance Claim and attending your school over the duration of the following semesters: Spring 2016 (01/20/2016 – 5/30/2016 at 14 credits). You must reapply for additional semesters as soon as the information is available. If your school schedule changes in any way you must notify the DUA immediately at 617-626-5521.

The claimant attended the program on a full time basis through the spring semester of 2016. She also attended the program's summer semester full time, but did not submit a new TOPS application because she did not realize she was supposed to do so.

By notice dated August 4, 2016, the DUA determined that the claimant was disqualified from benefits for the week ending July 30, 2016, because her TOPS program approval, along with the waiver of the work search requirements of G.L. c. 151A, § 24(b), had expired on May 30, 2016,

and the claimant did not actively seek work that week. The claimant timely appealed this determination. 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 September 16, 2016. We accepted the claimant's application for review. The following decision is based upon a consideration of the recorded testimony and evidence from the hearing, the review examiner's decision, the information contained in the DUA's UI Online computer database, and the claimant's appeal.

The issue before the Board is whether the review examiner's conclusion that the claimant was not enrolled in an approved TOPS program during the week in question and therefore was required to be actively seeking work is supported by substantial and credible evidence and is free from error of law, where, subsequent to the hearing, the DUA has approved the claimant's program for its entire duration, including the time period at issue here.

### Findings of Fact

The review examiner's findings of fact and credibility assessments are set forth below in their entirety:

1. On October 9, 2015, the claimant filed an unemployment claim effective for October 4, 2015.
2. On or about January 5, 2016, the claimant submitted a Training Opportunity Program ("TOPs") application to the Department of Unemployment Assistance ("DUA") for a full time associate's degree program ("the Program") at a community college.
3. On January 9, 2016, the DUA sent the claimant a Notice of Approval ("the Approval") under Section 30 of the Law to attend the Program. The Approval stated: "You will receive a work search waiver while receiving Regular benefits and an extension of up to 26 weeks when your regular benefits exhaust. You may receive the waiver and benefits while collecting on your 2015 Unemployment Insurance claim and attending your school over the duration of the following semesters: Spring 2016 (01/20/2016 - 5/30/2016 at 14 credits). You must reapply for additional semesters as soon as the information is available."
4. On an unknown date, the claimant received the Approval.
5. The claimant attended the Program's spring 2016 semester from January 20, 2016 until May 30, 2016.
6. On June 6, 2016, the claimant began attending the Program's summer semester full time, Monday, Tuesday and Wednesday from 9am to 1pm; Friday from 9am to 4pm and an online class that required her to log in to a forum on three days of the week.

7. The claimant did not submit a new TOPs application for the summer 2016 semester because she did not realize she was supposed to reapply.
8. For the week ending July 30, 2016, the claimant had no physical restrictions preventing her from working.
9. For the week ending July 30, 2016, the claimant was not available for full time work because she was attending school full time.
10. For the week ending July 30, 2016, the claimant did not search for employment because she was attending school full time.

### Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the 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 findings of fact and deems them to be supported by substantial and credible evidence. However, the Board concludes that those facts, together with information available in DUA's on-line database, indicate that the claimant is entitled to benefits during that week.

This case arises under G.L. c. 151A, § 24(b), which provides, in pertinent part, as follows:

An individual, in order to be eligible for benefits under this chapter, shall . . . (b) Be capable of, available, and actively seeking work in his usual occupation or any other occupation for which he is reasonably fitted . . . .

Under the foregoing provision (hereafter, Section 24(b)), the claimant has the burden to prove that she meets each requirement of this statute. In this case, the record establishes that the claimant was capable of working during the week in question, but she was not available for work or actively seeking work because she was in school full time. The claimant contends that she was exempt from the requirements of Section 24(b) because she was attending a DUA-approved training program, pursuant to G.L. c. 151A, § 30(c). The regulations governing those training programs provide:

Participants approved under M.G.L. c. 151A, § 30(c) shall not be required to engage in work search activities, and shall be deemed available for suitable work during any week in which the participant is in attendance at the approved training program, or during an approved break in training pursuant to 430 CMR 9.08.

430 CMR 9.07(2).

There is no question that, in January 2016, the DUA approved the claimant to attend a program at a community college that would lead to an Associate's degree in Bio-technology and Compliance. There is also no question that, at the time of that initial approval, the DUA was aware that the claimant was enrolled in a single degree program with an expected completion

date of May 2017. The materials available in the agency's digital database, UI-online, in connection with Issue ID # 0017 7504 43, show that the claimant's original training program application stated the dates of the program as January 20, 2016 through May 30, 2017, that the claimant needed 42 credits to complete the program, and that she planned to attend full time. The DUA's initial approval of the program was accompanied by a note in UI-online describing the program as starting on January 20, 2016 and completing on May 30, 2017.

The problem leading to the instant case arose because, at the time the claimant and her college filled out the initial application, the claimant and the school were able to state that the program would be full time, but were not able to state specifically which courses and credits the claimant would be taking in any term other than the spring semester that began on January 20, 2016. Accordingly, the DUA approved the program but limited the approval to the spring semester, directing the claimant to submit the additional details as to courses and credits for the remaining semesters as soon as it was available. The claimant did not understand that she was expected to submit a new application in order to maintain her Section 24(b) waiver. Finding of Fact # 7. She continued in the program on a full time basis over the summer and into the fall of 2016, without receiving an updated approval from the DUA. At the time the instant case arose, during the week ending July 30, 2016, the claimant's initial approval had lapsed and with it the Section 24(b) exemption.

On September 9, 2016, the DUA received an updated application form from the claimant for the same program, reflecting the specific credits and courses in which she had and would be enrolled during the summer and fall of 2016 and the spring of 2017. On September 29, 2016, the DUA issued a redetermination in Issue ID # 0017 7504 43, the same issue involving the same training program, and approved the claimant for Section 30 benefits for each semester between January 2016 and May 2017, including the week at issue in the instant case. The redetermination specifically stated that the claimant was granted a waiver of the work search requirements during the period of the entire program. After issuing this redetermination, the agency retroactively voided all Section 24(b) disqualifications for weeks falling within the period of the claimant's program, except those issues that had already reached the appellate level, including the instant case.<sup>1</sup> Under the agency's redetermination and updated approval, therefore, the claimant was not required to meet the requirements of Section 24(b) during the week ending July 30, 2016.

We, therefore, conclude as a matter of law that the claimant was not required to meet the requirements of G.L. c. 151A, § 24(b) during the week ending July 30, 2016, because she was participating in an approved training program under G.L. c. 151A, § 30(c).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending July 30, 2016, if otherwise eligible.



Paul T. Fitzgerald, Esq.  
Chairman

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - February 28, 2017**

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<sup>1</sup> The UI-online system is structured such that issues pending at an appellate level must be resolved at that level.



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.

JN/jv