

Claimant's § 24(b) obligations are waived during the period in question, because he was continuing to attend an already-approved § 30 program. Although the approval had temporarily lapsed, DUA subsequently approved his participation in the § 30 program for the entire period.

**Board of Review
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Issue ID: 0019 6711 44

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Heidi Saraiva, 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 effective January 3, 2016. On March 21, 2016, he submitted an application for Training Opportunities Program (TOP) benefits with the DUA, for a full time bachelor's degree program in Computer Engineering at a local university. The claimant's application was approved in a notice issued on April 6, 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 Bachelor of Science – Computer Engineering degree at Boston University. 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 2016 Unemployment Insurance claim and attending your school over the duration of the following semesters: Spring 2016 (1/19/2016 - 5/7/2016 at 16 credits). If your school schedule changes in any way you must notify the DUA immediately at 617-626-5521.

After the spring, 2016, semester, the claimant continued his full-time attendance during the fall semester of 2016 as well as the spring semester of 2017. In a notice dated November 8, 2016, the DUA determined that the claimant was indefinitely disqualified from benefits, beginning September 4, 2016, because he did not meet the availability requirements of G.L. c. 151A, § 24(b) (Section 24(b)). The claimant timely appealed this determination. Following a hearing on the merits attended by the claimant, the review examiner rendered a decision dated December 28, 2016, largely affirming the agency's initial determination and denying benefits through the week ending May 14, 2017. 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 system, and the claimant's appeal.

The issue before the Board is whether the review examiner's conclusion that the claimant was required to meet the requirements of Section 24(b) is supported by substantial and credible evidence and is free from error of law, where, subsequent to the hearing, the DUA corrected its original April 6, 2016 Notice of Approval to indicate that the claimant was in fact participating in an approved TOPS training program and waived from the requirements of Section 24(b) through May 12, 2017.

Findings of Fact

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

1. On January 4, 2016, the claimant filed an initial claim for benefits effective January 3, 2016.
2. Since September 4, 2016, the claimant has not had a physical injury or illness, which prevented him from work.
3. In the fall of 2014, the claimant enrolled in a computer engineering bachelor's degree program at Boston University. The claimant is expected to graduate in May 2017.
4. For the fall 2016 semester the claimant took 16 credit courses. The claimant began the courses September 6, 2016 and completed them on December 20, 2016.
5. For the spring [2017] semester the claimant is enrolled in 16 credit courses. He begins the courses on January 17, 2017 and will complete them May 10, 2017.
6. Since the claimant began school September 6, 2016, he has not been available for work because he is focused on school. The claimant is required to maintain a certain grade point average to be eligible for his scholarship.
7. The claimant will be available for work after he graduates in May 2017.
8. The claimant is looking for work after graduation.
9. On November 8, 2016, the Department of Unemployment Assistance issued the claimant a Notice of Disqualification, which notified him he was not entitled to benefits under Section 24(b) of the Law for the period beginning September 4, 2016 and an indefinite period of time thereafter.

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 from the DUA's UI Online system, indicate that the claimant is entitled to benefits for the period in question.

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, the claimant has the burden to prove that he 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 was not available for work, and was only actively seeking work that would begin after May 2017, because he was in school full time. The claimant contends that he should be exempt from the requirements of Section 24(b), because he was attending DUA-approved TOP training, pursuant to G.L. c. 151A, § 30(c). One of the regulations governing those training programs, 430 CMR 9.07(2), provides:

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.

There is no question that, on April 6, 2016, the DUA approved the claimant to attend a program at a local university that would lead to a bachelor's degree in Computer Engineering. 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 claimant's original training program application documentation¹ stated the dates of the program as September 2, 2014 through May 2, 2017, that the claimant needed 49 more credits to complete the program, and that he was attending full time. The DUA's initial approval of the program was accompanied by a note in UI Online noting the May 2017 completion date.

For unknown reasons, the DUA approved the program but limited the approval to the spring, 2016, semester. The April 6, 2016, Notice of Approval did not indicate that further action was required of the claimant and only directed the claimant to contact the DUA "[i]f [his] school schedule changes in any way." Thus, the claimant took no further action and continued his studies during the fall, 2016, semester, when the current issue arose. The adjudication department and the review examiner disqualified the claimant, under Section 24(b), because, at that point, his Section 24(b) exemption had lapsed along with his TOP program approval.

¹ These materials are in connection with Issue Identification Number 0018 3639 63.

The DUA later corrected its initial error, and on January 23, 2017 issued a Corrected Notice of Approval to extend the claimant's TOP approval through May 12, 2017. This notice specifically stated that the claimant was granted a waiver of the work search requirements during the fall, 2016, and spring, 2017, semesters. Under the agency's corrected approval, therefore, the claimant was not required to meet the requirements of Section 24(b) for the entire period of January 19, 2016, through May 12, 2017.

We, therefore, conclude as a matter of law that the claimant is not required to meet the requirements of G.L. c. 151A, § 24(b), for the period of January 19, 2016, through May 12, 2017, because he was participating in an approved training program, pursuant to G.L. c. 151A, § 30(c).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the weeks ending September 10, 2016, through May 13, 2017, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 27, 2017



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

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.

JRK/th