

Claimant, who was retroactively disqualified from all training benefits because his ESL program was not an approved program, after having been paid RED benefits without being approved for them, was eligible for the weeks during which his training program was subsequently approved within MOSES.

**Board of Review
19 Staniford St., 4th Floor
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member**

Issue ID: 0020 4389 56

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), 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. We reverse the denial of training benefits for the weeks at issue while the claimant's program was approved, and we affirm the denial of training benefits before the program was approved.

The claimant separated from employment and filed a claim for unemployment benefits on July 29, 2016, which was subsequently approved. On December 13, 2016, the claimant filed an initial application for training benefits. The DUA issued a Redetermination and Notice of Disqualification on September 28, 2017, which resulted in the claimant having been overpaid \$11,205.00 in training benefits, for which he was not eligible. The claimant appealed the redetermination to the DUA hearings department. Following a hearing on the merits, which the claimant attended, the review examiner affirmed the agency's redetermination and denied training benefits in a decision rendered on November 29, 2017. We accepted the claimant's application for review.

Training benefits were denied because the claimant did not establish that his training program had been approved by the Massachusetts One Stop Employment System (MOSES) and, thus, he was ineligible for training benefits pursuant to G.L. c. 151A, § 30(c). Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal.

The issue before the Board is whether the review examiner's initial conclusion, that the claimant was ineligible for training benefits because he failed to establish that his program had been approved for training within MOSES, is supported by substantial and credible evidence and is free of error of law.

Findings of Fact

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

1. The claimant resides in Rhode Island.
2. The claimant's native language is French.
3. The claimant filed an unemployment claim in Massachusetts with an effective date of July 24, 2016.
4. On an unknown date, the claimant met with an Attleboro Career Center representative and she told the claimant about the Training Opportunities Program (the TOPs). The representative notified the claimant he was required to consider three schools and had to attend a full time program, consisting of 20 hours a week, to be eligible for Section 30 Benefits. The representative gave the claimant a list of approved school programs for him to consider.
5. The claimant applied for and was accepted to the Pawtucket Adult Education Program (the Program). The Program offered English as a second language course and computer skills.
6. The claimant began attending the Program full time, Monday through Thursday, from 9am to 2pm, on December 5, 2016.
7. On or about December 7, 2016, the claimant submitted the TOPs application to the Program's adult education case manager (the AECM) for completion.
8. When the AECM completed Part B, the school's portion of the TOPs application, she did not respond to "Part B Question 1. Is your school licensed or certified by any state or federal agency; Question 4. Employee Account Number (EAN); and Question 6. Training PRO/MOSES course ID #".
9. When she completed the TOPs application, the AECM indicated the name of the Program was "Pawtucket Adult Education Program" with an address of "50 Park Place Pawtucket Rhode Island 02860."
10. The claimant mailed the TOPs application to the Section 30 Unit with a metered date of December 28, 2016.
11. On March 15, 2017, the AECM received an email from the Massachusetts Department of Career Services with the subject line "ETPL Compliance status – Pawtucket School Dept. Adult Education Program". The email stated "Please be informed that your training provider is approved on the Massachusetts Eligible Training Provider list (ETPL) until 6/30/2017."
12. The March 15, 2017 email did not provide a PRO/ MOSES course identification number, the course name or address for the course provider.

13. MOSES indicates Adult English Language Classes (ESL) with an address of Pawtucket School Department, 286 Main Street, Pawtucket, Rhode Island is an approved program under Section 30, effective May 3, 2017 and an end date of June 30, 2017.
14. The Program is not an approved or recognized TOPs program in the state of Massachusetts.
15. On September 28, 2017, the DUA issued the claimant the Redetermination Notice of Disqualification (the Notice) denying his TOPs application because the Program is not registered and approved in the Training PRO/MOSES.

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. After such review, the Board adopts the review examiner's findings of fact except for Findings of Fact ## 10 and 14.¹ As discussed more fully below, while we believe that the review examiner's findings of fact support the conclusion that the claimant was ineligible for training benefits before May 3, 2017, we conclude that the claimant was participating in an approved training program from May 3 through June 9, 2017, and that he was eligible for training benefits during that period.

The review examiner initially denied the claimant's application for training benefits, concluding that he failed to meet the requirements of G.L. c. 151A, § 30(c), which relieves claimants who are enrolled in *approved* retraining programs of the obligation to search for work, and permits extensions of up to 26 weeks of additional benefits while enrolled in training. 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 training benefits. The review examiner initially denied the claimant's request for training benefits after concluding that he had not established that his program had been approved for training benefits.

At the outset, the DUA regulations require that the training program itself must secure approval to ensure that it meets "certain measureable standards as set forth in 430 CMR 9.05(2)(a) through (e)." 430 CMR 9.05(2). This is a two-step process, whereby the Department of Career Services (DCS) first ensures that the training provider is in compliance with state law, (e.g., licensure,

¹ Finding of Fact # 10 incorrectly indicates the claimant mailed his TOP application on December 28, 2016. However, Exhibit # 2 clearly shows a postmark of December 13, 2016; and Exhibit # 1 was stamped as received by the DUA on December 16, 2016.

As we discuss more fully below, Finding of Fact # 14, which indicated the claimant's program was not approved for training in the Commonwealth of Massachusetts, is inconsistent with Finding of Fact # 13, which noted the Adult ESL course at Pawtucket School Department was approved for Section 30 training from May 3 through June 30, 2017.

taxes, etc.).² Second, the specific training course must be approved by the DUA Training Opportunities Program (TOP) Unit to ensure that it meets the criteria under 430 CMR 9.05. In the present case, this second approval was not granted until May 3, 2017. See Exhibit 4, page 1.³

While the review examiner carefully cited differences in the documentary evidence for the course title, school name, and addresses for the claimant's program to conclude that the claimant was ineligible for benefits, we conclude otherwise.

Our review of the documentary evidence shows the Federal employer number for the program ([X]) is the same on the claimant's TOP application (Exhibit # 1) and on the MOSES printout approving the program for training benefits from May 3 through June 30, 2017 (Exhibit # 4).

In this case, the "Pawtucket Adult Education Program" for ESOL at 50 Park Place (Exhibit # 1) seems substantively identical to the "Adult English Language Classes (ESL)" at the Pawtucket School Department at 286 Main Street⁴ (Exhibit # 4), where the two documents — and programs — share the same federal employer number.

There is nothing in the record to show why or how the claimant came to be paid training benefits from February 26, 2017, through June 10, 2017 — only that he was paid such benefits for that period of time (*see* Exhibit # 8), and that the DUA subsequently issued a redetermination disqualifying him from training benefits (Exhibit # 5). However, the evidence before us supports the conclusion that as of May 3, 2017, the claimant's program was approved for training benefits in MOSES. *See* Exhibit # 4.⁵ We, therefore, conclude as a matter of law that the claimant was eligible for training benefits between May 3, 2017, and June 10, 2017, pursuant to G.L. c. 151A, § 30(c), and 430 CMR 9.01–9.09.

The review examiner's decision is affirmed in part and reversed in part. The claimant is ineligible for training benefits from February 26, 2017, through May 3, 2017. However, the claimant is entitled to receive training benefits from May 3, 2017, through June 10, 2017.

We direct the claimant's attention to the fact that he may request a waiver of recovery of the outstanding overpayment balance pursuant to G.L. c. 151A, § 69(c). The claimant may obtain a waiver application form or assistance with the application by contacting the

² *See* Exhibit 6, page 3, an email, dated March 15, 2017, from DCS to the Pawtucket School Department stating that the training provider is approved to be on the Massachusetts Eligible Training Provider list. Although not explicitly incorporated into the review examiner's findings, this email is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. *See* Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

³ Exhibit 4, page 1 is a screen shot from the Massachusetts One Stop Employment System (MOSES). It is also part of the unchallenged evidence in the record.

⁴ While the address differences could be between the school department's administrative offices and the actual training site, we believe the identical federal employee number renders irrelevant any further inquiry into the address difference.

⁵ We note that, although the March 15, 2017, email to the claimant's program administrator confirms that the provider was approved to be on the Massachusetts Eligible Training Provider list (ETPL), the email does not specify that the claimant's program was approved within MOSES. *See* Exhibit # 6, p. 3. Such approval was not conferred until May 3, 2017. *See* Exhibit # 4.

Overpayment/Waiver Unit at (617) 626-6300, or by writing to the DUA Overpayment Department, 19 Staniford Street, Boston, MA 02114.

BOSTON, MASSACHUSETTS
DATE OF DECISION - January 31, 2018



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

**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.

JPC/rh