

Claimant who failed to mail his application for training benefits for one week because it was his “first time” did not establish good cause for failing to apply before the end of his 20th compensable week, and his program’s closure due to lack of funding is further disqualifying.

**Board of Review
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BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Matthew Shortelle, 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 affirm.

The claimant separated from employment and filed a claim for unemployment benefits on July 18, 2016, which was subsequently approved. On December 13, 2016, the claimant filed an initial application for training benefits, which was denied in a determination issued on January 3, 2017. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, which the claimant attended, the review examiner affirmed the agency’s determination and denied training benefits in a decision rendered on May 2, 2017. We accepted the claimant’s application for review.

Training benefits were denied because the claimant did not file within his twentieth compensable week and, thus, was ineligible for training benefits pursuant to 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 regarding the claimant’s application for training benefits, as well as evidence from a representative from the claimant’s training program regarding whether the program has registered to participate in the Training Opportunities Program (TOP). The review examiner conducted a remand hearing, which the claimant attended. Thereafter, he issued his 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 initial conclusion, that the claimant was ineligible for training benefits because he failed to establish good cause for failing to submit his TOP application within the 20-week deadline or show that he would complete the program within the time required, is supported by substantial and credible evidence and is free of error of law.

Findings of Fact

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

1. On July 18, 2016, the claimant filed a claim for unemployment benefits with an effective date of July 17, 2016.
2. The claimant speaks Mandingo. The claimant understands limited English and speaks a limited amount of English.
3. On August 31, 2016, the claimant went to the [City A] Career Center and attended Reemployment Services and Eligibility Assessment (RESEA). The RESEA was completed in English.
4. On August 31, 2016, while at the [City A] career center, the claimant completed other activities.
5. On September 6, 2016, the claimant completed the RESEA review in English. Another individual at the career center assisted the claimant to complete the RESEA review.
6. On September 6, 2016, career center personnel told the claimant he could attend school.
7. The claimant did not have an interpreter assist him at the RESEA or the RESEA review.
8. The claimant did not understand any potential information regarding the Training Opportunities Program (the TOP) or Section 30 included in the RESEA or the RESEA review.
9. The claimant did not understand any potential written information given to him regarding the TOP or Section 30.
10. On November 17, 2016, the claimant began to attend the [[City B] Adult Education] Program's English language program [the Program].
11. The Program is certified by the Department of Unemployment Assistance (the DUA) TOP program. The MOSES course identification number is: 1113292.
12. Around November 19, 2016, a friend of the claimant's told the claimant he had obtained benefits while he was in school, the claimant asked if he could obtain benefits while in school, and the claimant's friend told the claimant he could obtain benefits while in school.
13. On December 6, 2016, the claimant completed his TOP application.
14. On December 7, 2016, the Manager signed the claimant's TOP application.

15. On December 13, 2016, the claimant submitted his TOP application to attend the Program.
16. The claimant waited until December 13, 2016, [to file his] TOP application because it was his “first time.”
17. The week ending December 17, 2016, was the [twenty-first (21st)] compensable week of the claimant’s claim for unemployment benefits.
18. The claimant’s TOP application failed to provide any information regarding the claimant’s date of attendance.
19. When submitting his TOP application, the claimant planned on attending the Program from June, 2017 through September, 2017.
20. As of the date of the initial unemployment hearing [May 1, 2017,] or the remand hearing [June 23, 2017], the claimant does not know when he will complete the Program.
21. The claimant attends the Program from 9 A.M. to 2 P.M., Monday through Thursday. The claimant spends approximately twenty hours per week in school and working on his school work.
22. As of the date of the remand hearing, the claimant is not attending the Program as planned between June, 2017, and September, 2017, as a result of the Program losing funding.
23. As of the date of the remand hearing, the Program plans on resuming around September 5, [2017].
24. As of the date of the remand hearing, the claimant will be required to complete computer modules at his own pace once the Program resumes.
25. As of the date of the remand hearing, the earliest date the claimant could complete the required computer modules and complete the Program would be approximately October 15, 2017.
26. As of the date of the remand hearing, there is no definitive date the claimant will complete 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 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, except for consolidated finding # 17, which originally provided that December 17, 2016 was the 22nd compensable week of the claim. It is properly calculated as the claimant's 21st compensable week.

The review examiner initially denied the claimant's application for training benefits, concluding 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 good cause for failing to timely file his application before the end of his twentieth compensable week, and he did not establish that he would complete his program within the time required.

At the outset, the statute requires that the claimant apply for training benefits within a proscribed deadline. G.L. c. 151A, § 30(c), 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 twentieth week of a . . . claim but the commissioner shall specify by regulation the circumstances in which the 20-week application period shall be tolled and the circumstances under which the application period may be waived for good cause. . . .

The claimant must be able to complete his program within two years (or three years, if remedial courses are necessary) as set forth in 430 CMR 9.05(2)(c):

Training programs must . . . [b]e completed within two years, or within three years if the program combines Basic Skills with vocational or industrial training....

Additionally, pursuant to 430 CMR 9.05(2), 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)."

We remanded this case in part because the review examiner miscalculated the claimant's compensable weeks, and his initial inquiry did not explore the claimant's reason for waiting until December 13, 2016, to submit his application for training benefits.

After remand, the review examiner found that the claimant's primary language is Mandingo, and he understands and speaks a limited amount of English. The claimant attended mandatory RESEA activities in August and September 2016, but these were conducted in English and the claimant did not have an interpreter assist him at these sessions. Even though the claimant attended a one-on-one RESEA review session on September 6, 2016, where he was told he could attend school, the review examiner credited the claimant's claim that he did not understand any written or spoken information that was conveyed to him about training programs through the DUA.

Nevertheless, on November 17, 2016, the claimant began attending an English language program at a provider that had secured approval for training benefits. Around November 19, 2016, a friend of the claimant's told him that he had obtained unemployment benefits while attending school, and the claimant could also obtain benefits while in school. More than two weeks later, the claimant obtained and filled out an application for training benefits on December 6, 2016. He brought it to an official from his training program, who filled out the school's portion of the application on December 7, 2016. The program was scheduled to have begun on September 12, 2016, and to have finished on June 9, 2017. *See* Hearings Exhibit # 3.

Thus by December 7, 2016, the claimant was aware of his ability to seek training benefits, and had a completed application for said benefits which was ready for submission to the DUA. If the claimant submitted the application upon its completion, he would have done so before the expiration of the 20th compensable week of his claim. However, the claimant did not send his application for training benefits to the DUA until December 13, 2016. This was during his 21st compensable week. When asked why he waited a week to submit his application, the review examiner found the claimant did so because it was his "first time." Thus on the record before us, we conclude as a matter of law that the claimant did not have good cause for failing to submit his training application before the end of his 20th compensable week.

Even if we concluded that the claimant had good cause for filing past the deadline, as of the date of the June 26, 2016, remand hearing, the claimant had stopped attending classes on an unspecified date because the program had lost funding. Although we recognize that the program's (possibly temporary) closure due to loss of funding is in no way the claimant's fault, neither is its *possible* resumption of funding, at some point in the future, a basis upon which to confer training benefits. We cannot approve training benefits for a claimant whose program's resumption is speculative, and whose presumptive end date compiles still more speculation upon speculation.

We, therefore, conclude as a matter of law that the claimant's application for training benefits does not meet the standards and criteria set forth in G.L. c. 151A, § 30(c), and 430 CMR 9.01–9.09.

The review examiner's decision is affirmed. The claimant is not entitled to receive an extension of up to 26 times his weekly benefit rate under G.L. c. 151A, § 30(c).

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 26, 2017



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