

The Board declined to penalize a claimant whose application for training benefits was timely filed but improperly denied as untimely by a DUA adjudicator, and then denied by a review examiner because the claimant had not yet begun the training program. After remand, the claimant established that he timely filed his application for an approved certificate training program, and thus qualified for training benefits.

**Board of Review
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Issue ID: 0020 5027 53

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Allison E. Williams, 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 which was effective July 31, 2016, and which was approved by the DUA. On December 22, 2016, the claimant filed an application with the DUA for an extension of benefits to attend a training program, which the agency denied on February 24, 2017. 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 March 30, 2017. We accepted the claimant's application for review.

Training benefits were denied after the review examiner concluded that the claimant had not yet enrolled in the program for which he sought training benefits and, thus, did not meet the requirements 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 back to the review examiner to take additional evidence regarding the claimant's participation in his training program, and whether the program itself was approved for training benefits. 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 had not yet begun the program for which he sought training benefits, 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 are set forth below in their entirety:

1. The claimant filed a new claim for benefits on 8/4/16 after having been permanently separated from employment. The effective date of the claim is 7/31/16.
2. The claimant was determined to be eligible and began receiving UI benefits. The claimant's 20th compensable week was the week ending 12/24/16.
3. During the week beginning 12/11/16, the claimant registered for school. He was slated to complete the program within a year.
4. The claimant had been enrolled in a [Mobile] and Desktop Web Developer program at Salem State University.
5. The claimant applied for Section 30 benefits on 12/22/16. He sent his TOPS application overnight to the DUA Staniford Street location and sent another copy via the regular US mail.
6. The DUA received the claimant's application and time stamped it on 12/23/16.
7. The claimant was waiting to hear from the agency as to whether his application had been approved before he started school. When he did not hear back, he was instructed by the University to resubmit his application which he did on 2/23/17.
8. The DUA subsequently issued the claimant a denial of his Section 30 application on 2/24/17 stating he had filed his application beyond the 20th compensable week. The claimant appealed the decision.
9. As of the date of the Remand hearing, 6/5/17, the claimant has commenced training at Salem State University.
10. The claimant is enrolled in the Web Design Professional Program which is a 52 week online program. He will receive a certificate upon completing the program. This is the same program for which he sought training benefits through his Section 30 applications. (Hearing Exhibits 1 and 2 of the original hearing)
11. The claimant commenced training on 4/23/17.
12. The claimant is expected to complete training on 10/23/17.
13. The claimant spends 3 to 4 hours a day, 4 to 5 days a week in training.

14. The course in which the claimant is enrolled, course # 1105196, is an approved program under Section 30 with a start date of 1/1/16 and end date of 6/30/17. (Remand Exhibit 5)
15. Documentation regarding the claimant's enrollment was submitted as Remand Exhibit 6.

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. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant's failure to begin his training program disqualifies him from training benefits.

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, 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.

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's application for training benefits was initially denied by the DUA as untimely filed, because the adjudicator improperly relied upon the claimant's second application for training benefits, rather than his virtually identical first application, which the DUA received and date-stamped on December 23, 2016. *Compare* Hearings Exhibits # 1 and # 2.¹ Where the claimant's twentieth compensable week was the week ending December 24, 2016, his initial application seeking approval for the same program was timely filed, and the determination denying training benefits was wrongly issued.

The review examiner initially found the claimant sought training benefits to attend a Mobile and Desktop Web Developer certificate program at Salem State University (SSU). His initial application indicated he would begin training on January 23, 2017, he would complete training on January 23, 2018, and the program required 20 hours of training each week. *See* Hearings Exhibit # 1.

Although the claimant's application for training benefits was timely filed, the review examiner denied training benefits because the claimant had not yet begun the program for which he sought training benefits. We note that, while the claimant's initial application was filed on December 23 and sought to begin training on January 23, 2017, the DUA had not issued a determination on the claimant's eligibility for training benefits by that date, 31 days after receiving his application.

Because the DUA wrongly denied training benefits as untimely filed, and the claimant claimed on his appeal to the Board that he had begun his training program since the initial hearing, we declined to penalize the claimant for not starting his training program as planned in January, and remanded the case back to the review examiner for additional evidence.

After remand, the review examiner found that the claimant had begun training on April 23, 2017, in the program for which he initially applied in December 2016, he expected to complete training by October 23, 2017, and the program in which he enrolled has been approved for § 30 training benefits. *See* Remand Exhibit # 5. The claimant corroborated his enrollment in the program with email correspondence from SSU confirming enrollment and payment for his training program. *See* Remand Exhibit # 6.

We, therefore, conclude as a matter of law that the claimant satisfied the requirements of G.L. c. 151A, § 30(c), and 430 CMR 9.00 *et seq.*

¹ The representative from the claimant's training program merely changed the program's anticipated start and end dates, and re-dated it to the day she signed the revised application.

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, pursuant to G.L. c. 151A, § 30(c), if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - June 28, 2017



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

Member Judith M. Neumann, 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.

JPC/rh