

Claimant whose application for training benefits was timely filed, but who was not able to begin his program as scheduled due to delays by the career center counselor in securing funds through WIOA, was eligible for training benefits once he began training, as he had good cause for not starting as scheduled. Since he remained able and available for work during the period of delay, he was eligible for any remaining regular benefits.

**Board of Review
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**Issue ID: 0020 8343 16
0020 3537 83
0020 9214 67**

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Meghan Orio-Dunne, a review examiner of the Department of Unemployment Assistance (DUA), to disqualify the claimant from receiving training benefits for the five weeks from January 15 through February 18, 2017. We review, pursuant to our authority under G.L. c. 151A, § 41. We affirm the portion of the decision disqualifying the claimant from *training* benefits during that period of time, pursuant to G.L. c. 151A, § 30(c). However, we conclude that the claimant is eligible for any remaining regular unemployment benefits during that period, pursuant to G.L. c. 151A, § 24(b); and that he is eligible for up to 26 weeks of training benefits beginning with the week ending February 25, 2017, for the reasons set forth below.

The claimant became separated from employment and filed a claim for unemployment benefits on August 3, 2016, which was approved by the DUA. On December 7, 2016, the DUA received the claimant's application for an extension of benefits to attend a training program, which the agency initially approved on December 16, 2016.

On March 10, 2017, the DUA issued three Notices of Disqualification to the claimant. The first Notice rescinded the initial award of training benefits under G.L. c. 151A, § 30(c), as of January 16, 2017, since the claimant had not begun that program as scheduled. *See* Issue ID # 0020 3537 83.¹ The second Notice denied a revised application for training benefits as untimely filed, again pursuant to G.L. c. 151A, § 30(c). *See* Issue ID # 0020 9214 67. The third Notice indicated that because the claimant's training benefits had been revoked, he was ineligible for benefits as of

¹ In Finding of Fact # 10, the review examiner found that the DUA issued this disqualification on February 3, 2017. We merely note that the agency's UI Online computer database currently shows a Redetermination and Notice of Disqualification on this Issue with a date of March 10, 2017.

January 16, 2017, until he established that he was capable of, available for, and actively seeking work pursuant to G.L. c. 151A, §§ 30(c) and 24(b).

The claimant appealed the last — and instant — determination to the DUA hearings department. Following a hearing on the merits, attended by the claimant, the review examiner issued a decision modifying the disqualification, affirming that the claimant was ineligible for training benefits between January 16 and February 19, 2017. We accepted the claimant's application for review.

Training benefits were denied after the review examiner concluded that although the claimant had timely filed his application for training benefits, and although she deemed the claimant's second application for training benefits to have been timely filed, the claimant was not enrolled in his program between January 16 and February 19, 2017, and, thus, did not meet the requirements 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, the claimant's appeal, as well as information obtained from the claimant's account in the DUA's UI Online computer database.

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 findings of fact are set forth below in their entirety:

1. On August 3, 2016, the claimant filed a new claim for unemployment benefits and obtained an effective date of July 31, 2016. The Benefit Year ends on July 29, 2017.
2. The claimant was eligible for financial assistance for training through the Workforce Innovation and Opportunity Act (WiOA).
3. On December 5, 2016, the claimant met with the Executive Director of Holyoke Works to discuss the school's CNA and ABE programs. At that time, the claimant completed all intake, assessment, and interviewing requirements to begin the Holyoke Works CNA and ABE programs.
4. That same day, the Executive Director spoke to the claimant's counselor at the Career Center. She informed the ED that the claimant's WiOA funding would be available from January 16, 2017 through July 14, 2017. The Executive Director assisted the claimant in completing a Training Opportunities Program (TOP) application based on the information provided by the career center.
5. The agency received the claimant's completed TOPS application on December 7, 2016, during the 19th [sic] compensable week of his claim.

6. The application indicated that the claimant would be attending a full-time (30 hours per week over the course of 5 days) adult basic education and certified nursing aide program at Holyoke Works from January 16, 2017 through July 14, 2017.
7. On December 16, 2016, the Agency approved the claimant's application for the Training Opportunities Program (Section 30) for the period of January 16, 2017 through July 14, 2017. He was granted a waiver of the work search requirements and up to 26 weeks times his weekly benefit rate in additional benefits while attending the full time program.
8. The claimant did not start the training program on January 16, 2017 because the Career Center had not yet been able to arrange for his WiOA funding. The claimant could not attend the training without these funds. The claimant waited until the funding was available and then registered for the same training program with the same training provider. The new training start date was February 20, 2017 with a scheduled completion date of August 20, 2017.
9. The claimant and Executive Director submitted a new TOP application documenting the new start and end date for the training program. The application was received on January 31, 2017, after the exhaustion of 25 weeks of Regular UI benefits.
10. On February 3, 2017, the Agency issued a Notice of Disqualification which stated, in part, "A change to your enrollment status has occurred and your school or training program approval has been revoked. Training approval is revoked effective 02/01/2017 because you did not start the training program".
11. On March 10, 2017, the Agency issued a Notice of Disqualification which stated, in part, "You are in attendance at a full time program and your application for school or training approval was denied"... "You are not eligible to receive up to 26 weeks times your weekly benefit rate in additional benefits while attending the full time program"... "Your Training Opportunities Program (Section 30) Application was filed after 20 compensable weeks of your Unemployment Insurance Claim, and it has been determined that your reason for submitting it beyond that period does not constitute good cause". The Notice of Disqualification included "enrollment dates" of 2/20/17 – 8/17/17.
12. He began the full-time adult basic education and certified nursing aide program at Holyoke Works on February 20, 2017 and is scheduled to sit for his CNA certification exam on April 14, 2017. After that date, he will continue adult basic education programming until August 18, 2017.

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, except the portion of Finding # 5 indicating that the claimant submitted his application for training benefits during his 19th compensable week. Review of the claimant's certifications for benefits in UI Online shows that the claimant submitted his training application during his 18th compensable week.

The statutory provisions for training benefits are set forth in 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 themselves, 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 review examiner found the claimant sought training benefits to attend a Certified Nursing Assistant/Adult Basic Education (CNA/ABE) program at Holyoke Works. He completed all of his intake, assessment, and interviewing requirements for Holyoke Works on December 5, 2016, and timely filed an application for G.L. c. 151A, § 30(c), benefits which was received by the DUA on December 7, 2016. His application indicated he would begin training on January 16, 2017; he would complete training on July 14, 2017; and the program required 26 hours of training each week. *See* Exhibit # 1.

The review examiner also found that on December 5, 2016, the executive director of Holyoke Works spoke to the claimant's counselor at a career center, who indicated that the claimant

would receive financial assistance for his program through the Workforce Innovation and Opportunity Act (WIOA), and that funding would be available for the period of January 16 through July 14, 2017. The DUA approved the claimant's application for training benefits on December 16, 2016.

But the claimant was unable to start his training on January 16 as scheduled. The review examiner further found the career center failed to timely secure the claimant's WIOA funding. The claimant could not begin training without those funds, so he waited until the funds were available and registered for the same program with Holyoke Works when the funding became available. *See* Exhibit # 9.

Additionally, the review examiner found that the claimant submitted a second application for training benefits (Exhibit #4), with a letter from the executive director of Holyoke Works explaining why the claimant had not begun training as scheduled (Exhibit # 3). The claimant began his program on February 20, 2017, and is scheduled to complete the program on August 18, 2017.

The Review Examiner's Initial Decision

We note that, although the claimant only appealed one of the three issues under which he was denied benefits on March 10, 2017, the review examiner's decision incorporated all three issues in her findings and analysis. Our reading of her analysis and conclusion lead us to believe her intent was to deny training benefits for the period when the claimant was not attending school, but to reinstate training benefits at the point when the claimant began his training program. However, the intricacies of the UI Online system did not alter the claimant's eligibility in the other two cases when the review examiner issued her decision in this case.

The Board normally has jurisdiction to address only the issue directly before us on appeal. In this case, however, we note that the review examiner has already incorporated all three UI Online issues into her decision, and the findings show that the claimant received all three notices of disqualification on the same day. In addition, the claimant reports in UI Online as having only an 11th grade education, and the training he seeks will provide Adult Basic Education in addition to the substantive CNA training he will receive. Moreover, we note that the delay to the start of his program and the ensuing denial of training benefits arose from a career center employee's failure to timely process an application for WIOA funding. We, therefore, decline to penalize the claimant for failing to appeal all three notices separately, and address each of the three issues below.²

Eligibility for Training Benefits (Section 30) (Issues ID # 0020 3537 83 and ID # 0020 9214 67)

The review examiner properly found that the claimant's first application for training benefits was timely filed, and evidence in the record supports the initial determination that his application and

² Normally we might refer this case elsewhere within the DUA to address the other two issues not directly before us. However, where the circumstances causing the claimant to delay his training appear to have arisen from a delay created by a career center counselor, as well as for each of the other reasons outlined above, we believe this approach better serves the interests of justice in this case.

the program itself meet the eligibility requirements for training benefits under G.L. c. 151A, § 30(c). *See* Issue ID # 0020 3537 83.

But the claimant was unable to begin the training program as scheduled, due to the career center counselor's being unable to timely complete the steps necessary to obtain WIOA funding. *See* Exhibit # 10. Consequently, the claimant could not begin training until a later date, after funding was awarded. We note that the cost of training (\$5,393.00, *see* Exhibit # 9) exceeded the regular unemployment benefits to which the claimant was found eligible (\$4,347.00)³. It appears unlikely that the claimant would have been able to commence training in his chosen program without the promised WIOA funds.

The Notice of Disqualification on the second training application (Issue ID # 0020 9214 67) failed to consider that the second application for training benefits was virtually identical to his first application, with only the dates of participation changed. *Compare* Exhibits ## 1 and 4. There was apparently no consideration of whether the claimant had good cause to delay starting his program. The review examiner properly concluded that because the first application was timely filed, the second (identical) application should be deemed timely filed as well.

The circumstances causing the claimant to delay starting his program by one month constitute good cause for not commencing the program as originally planned. We note that the claimant's testimony was corroborated both by sworn testimony from the Holyoke Works executive director, who accompanied him to the hearing and had previously provided a letter to support his revised application (Exhibit # 3), as well as by a letter from a Director of Career Center Services explaining that the delay in his WIOA funding was due to his case manager's inability to complete the funding application in a timely fashion. *See* Exhibit # 10.

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.*

Eligibility for Benefits between January 15 and February 18, 2017 (Issue ID # 0020 8343 16)

In the case directly before us, the review examiner properly concluded that the claimant was ineligible for *training* benefits between January 15 and February 18, 2017. However, her decision does not address the claimant's eligibility for regular unemployment benefits during this period of time. On January 23, 2017, the claimant stated on a DUA questionnaire that he was able, available for, and actively seeking work. *See* Exhibit # 5. There is nothing in the record which causes us to question the claimant's certifications in this regard. We, therefore, conclude as a matter of law that the claimant satisfied the requirements of G.L. c. 151A, § 24(b), and is eligible for any regular unemployment benefits to which he is entitled between January 15 and February 18, 2017.

Conclusion of the Board

³ We note the claimant's total regular unemployment benefit award from the DUA's electronic record-keeping system, UI Online.

The review examiner's decision in Issue ID # 0020 8343 16 is affirmed in part and reversed in part. The claimant is ineligible for training benefits between January 15 and February 18, 2017, pursuant to G.L. c. 151A, § 30(c). During this time period, the claimant is eligible for any remaining weeks of regular unemployment benefits he may have pursuant to G.L. c. 151A, § 24(b).

The Redetermination in Issue ID # 0020 3537 83 and the Notice of Disqualification in Issue ID # 0020 9214 67 should be reversed, consistent with this decision. Beginning with February 19, 2017, 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 - September 25, 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