

The 20-week Section 30 application period did not begin until DUA approved the claimant's regular unemployment claim and began paying benefits.

**Board of Review
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Issue ID: 0022 2673 94

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by 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 separated from employment, filed an unemployment claim, effective December 4, 2016, and was approved for benefits on February 4, 2017. He subsequently filed an application with the DUA for an extension of benefits to attend a training program, which the agency denied on July 20, 2017. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by the claimant, the review examiner affirmed the agency's determination and denied the extension of benefits in a decision rendered on September 21, 2017. We accepted the claimant's application for review.

The extended benefits were denied after the review examiner determined that the claimant had not met the 20-week application deadline, as required under 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 conclusion, that the claimant failed to apply for benefits pursuant to G.L. c. 151A, § 30(c) (Section 30 or training benefits) within the statutory deadline, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant filed a claim for unemployment benefits and received an effective date of December 4, 2016.

2. The claimant's would-be twentieth compensation week ended on April 29, 2017.
3. The claimant went to a career center orientation on February 22, 2017. The claimant learned of the section 30 program during the orientation.
4. The career center has a note in its system that the claimant had signed off and acknowledged that he had been informed about the TOP/Section 30 program and understands that he must submit a completed application within the first 20 weeks of receiving unemployment benefits.
5. The claimant looked into programs and found a program he liked in April 2017. The claimant contacted the school at the end of April 2017.
6. The claimant decided he wanted to enroll in a substance abuse certificate program.
7. The claimant looked into funding for his certificate program.
8. The claimant could not afford to go back to school unless he had funding in place.
9. The claimant secured funding in May 2017.
10. The claimant began the program on May 30, 2017.
11. The claimant is scheduled to complete the program May 16, 2018.
12. The claimant submitted his section 30 application on July 5, 2017.
13. On July 20, 2017, the claimant received a Notice of Disqualification, which indicated that the claimant had been denied section 30 benefits because he had failed to apply for such benefits by the twentieth compensable week of his claim.
14. The claimant appealed the disqualification.

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 as follows. For reasons explained more fully below, we disagree with the statement in Finding of Fact # 2 that the date of April 29, 2017, was the claimant's 20th compensable week. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence.

However, we reject the review examiner's legal conclusion that the claimant failed to submit a timely Section 30 application.

The review examiner's decision to deny the claimant's application for the 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 approving training benefits are set forth in 430 CMR 9.00–9.09. Under Section 30, it is the claimant's burden to prove that he fulfills all of the requirements to receive a training extension.

The review examiner denied the claimant's request for these training benefits after concluding that he had not established good cause for failing to timely file his Section 30 application. 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 counted 20 weeks from the assigned effective date of the claim to reach the date of April 29, 2017, as his application deadline. *See* Finding of Fact # 2. However, the DUA's regulations instruct that the 20-week statutory deadline applies to *compensable* weeks. *See* 430 CMR 9.01.¹ In the present case, the DUA did not begin paying the claimant his regular unemployment benefits until he had been approved for those benefits, which was during the first week of February or the week ending February 4, 2017.² Since he was not compensated until February, it is not appropriate to start the clock on the Section 30 application period before then.³ Twenty weeks starting from the first week in which the claimant was compensated for benefits, the week ending February 4, 2017, is June 17, 2017. Thus, the claimant must show that he applied for Section 30 benefits on or before June 17, 2017.

Finding of Fact # 12 states that the claimant submitted his Section 30 application on July 5, 2017. This is based upon the first page of a Section 30 application and fax cover page showing

¹ The current version of 430 CMR 9.01, promulgated on October 2, 2009, still refers to a 15-week application period. On August 10, 2016, the Legislature amended the statute to expand the deadline to 20 weeks.

² This approval date appears in the DUA's electronic record-keeping system, UI Online.

³ We note that had the claimant submitted a Section 30 application before this first week of February, it would not have been approved. The program is only available to persons with an eligible claim for unemployment benefits. *See* 430 CMR 9.02.

the date of July 5, 2017, and notes in UI Online indicating that DUA began processing his request for Section 30 benefits on that date. *See* Exhibits ## 1 and 3. The claimant does not dispute that he submitted a Section 30 application on July 5, but he insists that this was not his first application. Without explanation, the review examiner ignores Exhibits ## 5–9, which constitute a complete Section 30 application, signed by the claimant and Quincy College officials, dated June 2, 2017.⁴ She also either missed or ignores other staff notes entered into UI Online, which confirm that the claimant called the agency on June 30, 2017, to inquire about the status of his application. In the June 30, 2017, notes, the staff person writes that the application was not showing as having been received. Both at the hearing and in conversations with DUA staff, the claimant has consistently insisted that he submitted a Section 30 application on or about June 2, 2017.⁵ Together, the claimant’s testimony, Exhibits ## 5–9, and the corroborating DUA staff notes constitute substantial evidence that the claimant submitted a Section 30 application before his June 17, 2017, statutory deadline.

In Board of Review Decision BR-107628 (Feb. 13, 2009), a claimant submitted a Section 30 application within the statutory time period, but the DUA could not process it due to lack of training funds. When funds became available, they asked him to resubmit an identical application, then denied it as untimely. We deemed the first application as controlling with regard to the application deadline. *Id.* at p. 4, *citing* Haefs v. Dir. of Division of Employment Security, 391 Mass. 804 (1984) (in light of the remedial purpose of G.L. c. 151A, claimant’s good faith effort to meet the extended benefits requirements of § 30A was sufficient). Although the facts here are not identical, because we do not know why the DUA has no record of his June 2, 2017, application, they are sufficiently similar. The claimant’s earlier Section 30 application was timely, the DUA required him to resubmit it in order to be considered for the program, and then the agency denied him training benefits because the application was late. Under these circumstances, the claimant’s Section 30 application is deemed to be timely.

We, therefore, conclude as a matter of law that the claimant’s application for training benefits under G.L. c. 151A, § 30(c), was timely filed.

The review examiner’s decision is reversed. The claimant is entitled to receive benefits, under G.L. c. 151A, § 30(c), if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - January 31, 2018



Paul T. Fitzgerald, Esq.
Chairman

⁴ While not explicitly incorporated into the review examiner’s findings, Exhibits ## 5–9 are part of the unchallenged evidence introduced at the hearing and placed in the record, and they are 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).

⁵ *See* Exhibit # 1, DUA staff notes documenting a call from the claimant on July 12, 2017.



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.

AB/rh