

**Claimant's application for training benefits was initially approved with a notice containing conflicting language simultaneously indicating her training benefits were disapproved. Due to the DUA's confusing notice, she is relieved of her obligations under G.L. c. 151A, § 24(b) to be available for and search for work, as well as the resulting \$6,224.00 overpayment, for the period she reasonably, but incorrectly, believed that her application for training benefits had been approved.**

**Board of Review  
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**Issue ID: 0022 4579 70**

## **BOARD OF REVIEW DECISION**

### **Introduction and Procedural History of this Appeal**

The claimant appeals a decision by Rorie Brennan, a review examiner of the Department of Unemployment Assistance (DUA), to deny unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant separated from employment, filed a claim for unemployment benefits on January 12, 2017, and was approved for regular benefits based on her separation. The claimant later applied for training benefits, which were approved by the DUA on April 15, 2017. *See* DUA Issue ID # 0021 5277 80. But, on July 25, 2017, the agency issued a redetermination on the claimant's application for training benefits, disqualifying her under G.L. c. 151A, § 30(c) (Section 30), because her chosen program is not necessary to obtain suitable employment, pursuant to 430 CMR 9.01. After the agency's redetermination denied training benefits, the agency issued the instant Notice of Disqualification on August 3, 2017, which also determined that the claimant had been overpaid 16 weeks of benefits, totaling \$6,224.00, from week ending April 8, 2017, through week ending July 22, 2017.

The claimant appealed both determinations to the DUA hearings department. Following separate hearings on the merits of each case, attended by the claimant, the same review examiner affirmed the agency's determinations and denied benefits in decisions rendered on September 22, 2017, in the instant case, and September 23, 2017, in her Section 30 case. The claimant appealed both decisions to the Board. We accept her application for review in the instant case.<sup>1</sup>

Benefits were denied and the overpayment was affirmed after the review examiner determined that the claimant was not available to work full-time while attending her full-time training

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<sup>1</sup> We denied review in the claimant's case brought under G.L. c. 151A, § 30(c), agreeing with the review examiner's conclusion that the claimant's chosen program, an online master's degree program in creative writing and English, is not necessary to obtain suitable employment. *See* Issue ID # 0021 5277 80.

program, and, thus, she was disqualified under G.L. c. 151A, § 24(b). 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 did not meet the statutory requirement to be available for full-time work 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 are set forth below in their entirety:

1. On 01/12/17, the claimant filed a claim for unemployment benefits with an effective date of 01/08/17.
2. The claimant does not have any medical or physical issues that restrict her ability to work.
3. Since February 2017, the claimant has been enrolled in an online full time Master's Degree Program. The claimant devotes a minimum of 5 days per week/8 hours a day to her course work.
4. The claimant does not have a prior history of working and attending school full time.
5. On 04/15/17, the DUA approved the claimant for the TOP (Section 30) Program which alleviated the requirement that she be available for work while attending school full time and that she perform work search activities while attending school full time.
6. At that time, the claimant stopped conducting work search activities.
7. Subsequently, the DUA issued a redetermination under Section 30 disqualifying the claimant for the same time period as the 04/15/17 approval.
8. On 08/03/17, the local office sent the claimant a Notice of Disqualification stating she was not eligible for benefits for the weeks 04/02/17 through 01/06/18 because she did not meet the requirements of Section 24(b) of the Law.

### 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. However, as discussed more fully below, we

reject the review examiner's legal conclusion that the claimant's limited availability and work search efforts render her ineligible for regular benefits during the 16 weeks at issue here.

The review examiner's decision to deny the claimant's application for training benefits in DUA Issue ID # 0021 5277 80 derived 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 she fulfills all of the requirements to receive training benefits. As noted above, we agreed with the review examiner's conclusion denying training benefits in that case, and separately denied the claimant's appeal of that decision.

In the instant case, the review examiner denied benefits pursuant to G.L. c. 151A, § 24(b), which provides, in pertinent part, as follows:

An individual, in order to be eligible for benefits under this chapter, shall . . . (b)  
Be capable of, available, and actively seeking work in his usual occupation or any  
other occupation for which he is reasonably fitted . . . .

Under G.L. c. 151A, § 24(b), the claimant has the burden to prove that she meets each requirement of this statute. While we agree with the substance of the review examiner's conclusion — the claimant failed to establish that she satisfied the availability and work search requirements<sup>2</sup> of § 24(b) — we conclude that the facts of this case compel a different outcome for the period of time between the agency's initial determination incorrectly approving the claimant's application for training benefits, and the agency's proper determination denying training benefits.

Among the various documents which the claimant uploaded into UI Online with her appeal to the Board was correspondence she received from the DUA on April 15, 2017.<sup>3</sup> At the top of the document, the determination's heading reads, in bold type, "Notice of Approval." In the first substantive section of the document, under "Reasoning and Findings," the text indicates in part that the claimant's "application for school ... was approved," she is "eligible to receive up to 26 weeks ... in additional benefits," and "you have been granted a waiver of the work search requirements." In the third section of the document, under "Effect of this Determination," it states in part, "You are eligible for additional benefits equivalent to 26 times your benefit amount...."

But in the second section of the document, under "Applicable Section of Law," it states in part, "Section 30 Benefits Denied [sic] The proposed program is not necessary to obtain suitable employment." And in the fourth section of the document, under "Important Information," it states in part, "You have been disqualified from attending the chosen training program/school."

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<sup>2</sup> The claimant's appeal contends that the review examiner failed to keep the record open to incorporate correspondence regarding her availability and her work search records. We note that the review examiner entered into evidence a two-page letter from the claimant, dated September 20, 2017, which did not itemize separate weekly work search efforts made by the claimant while she was claiming benefits. See Hearings Exhibit # 6.

<sup>3</sup> Item E6 was uploaded into the claimant's Appeal Case Folder for this issue in UI Online on October 10, 2017.

In view of the inconsistency within the language of the DUA's April 15 Notice of Approval issued to the claimant, we conclude that the claimant could have reasonably believed that the agency had properly granted her training benefits, along with a waiver of the work search requirements of G.L. c. 151A, § 24(b), and reasonably relied on that belief when she made herself unavailable for full-time work. Although the claimant could have sought clarification of the inconsistency sooner, we decline to penalize her further for the agency's initial error, or to remand the case for further inquiry as to when she first noticed the inconsistency, and why she did not seek clarification sooner.

We, therefore, conclude as a matter of law that, between April 15, 2017, when DUA issued an inherently contradictory Notice of Approval, and July 25, 2017, when the agency properly issued a redetermination denying the claimant's application for training benefits, the claimant reasonably relied on information from the DUA that relieved her of the requirements to be available for and actively seeking training benefits. We note that, after the July 25, 2017, disqualification, the claimant remained obligated to meet all three of the requirements of G.L. c. 151A, § 24(b), in order to collect any remaining regular unemployment benefits.

The review examiner's decision is reversed. The claimant is relieved of the work search requirements of G.L. c. 151A, § 24(b), from the week ending April 8, 2017, through the week ending July 22, 2017. She is also relieved of the requirement to repay the \$6,224.00 overpayment imposed during this period.

Along with this decision, we are putting an end date of July 22, 2017, on this issue and will create a new issue for the DUA to investigate under G.L. c. 151A, § 24(b), for any remaining weeks of regular unemployment benefits to which the claimant may be otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - October 17, 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](http://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