

Claimant, who began his training before filing for unemployment benefits, was entitled to a work search waiver as of the date he was approved to participate in the Section 30 program.

**Board of Review
19 Staniford St., 4th Floor
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member**

Issue ID: 0022 6217 28

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Krista Tibby, 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 we affirm in part and reverse in part.

The claimant separated from employment and filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on August 23, 2017. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by the claimant, the review examiner modified the agency's initial determination and denied benefits in a decision rendered on September 22, 2017, but only during the weeks ending August 12, 2017 through September 16, 2017. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not able, available, and actively seeking work, and, thus, he 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 is disqualified by G.L. c. 151A, § 24(b), during the entire period from the week ending August 12, 2017, through September 16, 2017, is supported by substantial and credible evidence and is free from error of law, where the record shows that he was approved for benefits under G.L. c. 151A, § 30(c), beginning on September 7, 2017.

Findings of Fact

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

1. On July 28, 2017, the claimant began attending school full time, Monday through Wednesday, from 8:30 a.m. to 3:30 p.m.; and Thursday and Friday, from 8:30 a.m. to 3 p.m.

2. The claimant opened a new claim for unemployment benefits, effective for August 6, 2017.
3. During the week ending August 12, 2017 and subsequent weeks, the claimant attended school full time.
4. For the weeks ending August 12, 2017 through September 16, 2017, the claimant had no physical limitations or medical issues to prevent him from working.
5. For the weeks ending August 12, 2017 through September 16, 2017, the claimant was not available to work full time because he attended school full time.
6. For the weeks ending August 12, 2017 through September 16, 2017, the claimant did not look for work because he was attending school full time.
7. On September 15, 2017, the Department of Unemployment Assistance (DUA) sent the claimant a Notice of Approval under Section 30 of the Law, with an approved date of September 7, 2017, stating, “You are in attendance at a full-time program and your application for school or training approval was approved pursuant to the above cited section of the Law. You are eligible to receive up to 26 weeks times your weekly benefit rate in additional benefits while attending the full-time program. In addition, you have been granted a waiver of the work search requirements.

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 do not agree with the review examiner’s legal conclusion that that claimant is ineligible for benefits during the week after he obtained approval for training benefits under G.L. c. 151A, § 30(c).

The claimant was disqualified under 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

An exception to this general requirement to be able, available, and actively seeking work is made for individuals who have been approved for an extension of benefits under G.L. c. 151A, § 30(c), while they participate in an approved training program (Section 30 benefits). *See* G.L. c. 151A,

§ 24(c). In the present case, the claimant became eligible for Section 30 benefits. *See* Finding of Fact # 7. The review examiner properly concluded that this approval waived the requirement to be able, available, and actively seeking work while attending the approved training program. *See* 430 CMR 9.07(2). However, the review examiner improperly disqualified the claimant during the week after he had been approved for Section 30 benefits.

The claimant began attending his training program before he applied for unemployment benefits. Findings of Fact ## 1 and 2. At some point after opening his claim, he applied for Section 30 benefits. DUA regulations state that, when a claimant begins his training program before final approval for Section 30 benefits, he is not eligible for the work search waiver until the date his application for Section 30 benefits is approved. 430 CMR 9.06(2)(b). Finding of Fact # 7 states that the DUA approval date for Section 30 benefits was September 7, 2017. *See* Exhibit 7.¹ Nonetheless, the review examiner denied him benefits during the following week, the week ending September 16, 2017. This was an error.

We, therefore, conclude as a matter of law that G.L. c. 151A, § 24(c), waives the claimant's obligation to be able, available, and actively seeking work upon his approval to participate in approved training under G.L. c. 151A, § 30(c).

¹ The review examiner may have mistakenly relied upon the date in the top right corner of the Section 30 Notice of Approval, September 15, 2017, which is the date that the DUA's UI Online system generated the notice. However, the Notice of Approval expressly provides that the claimant was approved on September 7, 2017. The September 7th date is confirmed by an adjuster's note entered into the UI Online database on September 14, 2017.

The portion of the review examiner's decision that disqualified the claimant from receiving benefits during the weeks ending August 12, 2017, through September 9, 2017, is affirmed. The portion of the review examiner's decision that disqualified the claimant during the week ending September 16, 2017, is reversed. The claimant is entitled to receive benefits for the week ending September 16, 2017, and for subsequent weeks, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - January 16, 2018



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.

AB/rh