

**Claimant established she would be able to graduate within two years of starting her bachelor's degree program.**

**Board of Review  
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**Issue ID: 0023 7675 87**

## **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 she 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 on June 2, 2017, which was eventually approved. On July 17, 2017, the claimant filed an initial application with the DUA for an extension of benefits to attend a training program. On November 21, 2017, the claimant filed a second application for training benefits to attend a training program at the same university. The agency initially approved the claimant's application on December 12, 2017. But on December 11, 2017, the claimant mailed a third application for training benefits to attend a program at the same university. On January 11, 2018, the agency issued a redetermination revoking and denying the claimant's application for training benefits. 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 determination and denied training benefits in a decision rendered on April 28, 2018. We accepted the claimant's application for review.

Training benefits were denied after the review examiner concluded that the claimant's program could not be completed within the two-year time frame set forth in G.L. c. 151A, § 30(c), and its applicable regulations. After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we remanded the case to the review examiner to take additional evidence regarding the claimant's training program and her progress in that program, including testimony from a representative from the claimant's chosen training provider. The claimant attended the remand hearing, which was continued over four sessions. The claimant failed to secure testimony from a representative from her training provider. Thereafter, the review examiner issued her consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant was ineligible for training benefits pursuant to G.L. c. 151A, § 30(c) (Section 30

benefits), because she did not establish that her program could be completed within two years, is supported by substantial and credible evidence and is free of error of law.

Findings of Fact

The review examiner’s consolidated findings of fact are set forth below in their entirety:

1. On June 2, 2017, the claimant filed an initial claim for unemployment insurance benefits (Exhibit 15). The claim is effective the week beginning May 28, 2017.
2. The claimant has already obtained an Associate’s Degree in Art.
3. The claimant has also already obtained a certificate in phlebotomy. The claimant is looking for employment in the phlebotomy field.
4. The claimant has decided to pursue her Bachelor’s Degree in Public Health in order to achieve better skills.
5. On July 17, 2017, the claimant mailed the Department of Unemployment Assistance (hereinafter the Department) a Training Opportunities Program (TOP) Application (hereinafter 1st application) for attendance at the University of Massachusetts Lowell (hereinafter UMass Lowell) (Exhibit 8).
6. On the 1st application, the UMass Lowell listed the following information (Exhibit 8):

Name of Certificate or Degree Program:	Bachelor’s Degree		
Full-Time/Part-time:	Full-time		
All Classes for the program will be completed on:	05/2020		
Number of Credits required to complete the program:	120		
Number of Credits this student needs to complete the program:	43		
Number of Credits student has already completed for the program:	77		
Period	Starts on:	Ends on:	# of Semester Credits
Fall	09/06/2017	12/21/2017	15

7. The claimant enclosed the following letter from the Registrar of the UMass Lowell with the 1st application (Exhibit 8):

“The University of Massachusetts Lowell occupies 43 buildings on three campuses and presently has a full time faculty in excess of 600 with a student enrollment of nearly 17,000.

Although the University does not require class attendance as a matter of institutional policy, course instructors have the option of establishing required attendance in their courses and of specifying penalties for student violations of such attendance requirements. Colleges also have the option and sometimes have adopted attendance policies for introductory and specialized learning situation.

As such, the University of Massachusetts Lowell cannot certify attendance or report future enrollment for individual students. You may call us at (978) 934-2550 for the current semester (Exhibit 8).”

8. On November 21, 2017, the claimant mailed the Department Training Opportunities Program (TOP) Application (hereinafter 2nd application) for attendance at the University of Massachusetts Lowell (Exhibit 1).
9. On the 2nd application, the UMass Lowell listed the following information (Exhibit 1):

Name of Certificate or Degree Program: Bachelor’s of Science  
Public Health

Full-Time/Part-time: Full-time

Classes starts on: 09/06/2017

All Classes for the program will be completed on: 12/21/2017

Number of Credits required to complete the program: 120

Number of Credits this student needs to complete the program: 43

Number of Credits student has already completed for the program: 77

Period	Starts on:	Ends on:	# of Semester Credits
Fall	09/06/2017	12/21/2017	15

10. On December 12, 2017, the Department issued the claimant a Notice of Approval, Issue Identification Number 0023 7675 87-01, granting the claimant benefits under Section 30 of the Law for her attendance at the University of Massachusetts at Lowell (Exhibit 14). On the Notice of Approval, the Department wrote in part: “You have been approved for the

Training Opportunities Program (Section 30) while attending UMass Lowell for Public Health Bachelor's of Science, from the post mark date your Training Opportunities Program (Section 30) application was received, which is 11/21/2017 through semester end date 12/21/2017 [sic] other was eligible for benefits (Exhibit 14).”

11. On December 11, 2017, the claimant submitted to the Department a Training Opportunities Program (TOP) Application (hereinafter 3rd application) for attendance at the University of Massachusetts Lowell (Exhibit 3).

12. On the 3rd application, the UMass Lowell listed the following information (Exhibit 3):

Name of Certificate or Degree Program: Bachelor's

Full-Time/Part-time: Full-time

Classes starts on: 01/22/2018

All Classes for the program will be completed on: 05/16/2020

Number of Credits required to complete the program: 120

Number of Credits this student needs to complete the program: 43

Number of Credits student has already completed for the program: 77

Period	Starts on:	Ends on:	# of Semester Credits
Fall	09/06/2017	12/21/2017	15
Spring	01/22/2018	05/11/2018	19

13. On an Enrollment Verification form from the UMass Lowell as of December 11, 2017, the UMass Lowell listed the following information for the claimant (Exhibit 4 Page 1):

Current Program of Study

Career	Academic Program	Expected Completion Date
Undergraduate	Zuckerberg Coll. Of Health Science	05/16/2020

Academic Plan	Degree	Declare Date	Sub-Plan
Public Health	BS	03/15/2017	General
French (minor)		10/24/2017	

Enrollment History

<u>Term</u>	<u>Career</u>	<u>Begin Date</u>	<u>End Date</u>	<u>Units</u>	<u>Status</u>
2017 Fall Time	UGRD	09/06/2017	12/21/2017	15.00	Full-
2018 Winter	UGRD	12/27/2017	01/12/2018	No Units	
2018 Spring Time		01/22/2018	05/11/2018	19	Full-

14. On January 11, 2018, the Department issued a Redetermination Notice of Disqualification, Issue Identification Number 0023 7675 87-02, denying the claimant benefits under Section 30 of the Law for her attendance at the University of Massachusetts Lowell (Exhibit 5). On the Notice of Disqualification, the Department wrote: “You are in attendance at a full-time program and your application for UMass Lowell or training approval was denied pursuant to the above cited section of the Law because the training program will not be completed within two years. You are not eligible to receive up to 26 times your week benefit rate in addition benefits while attending the full-time program (Exhibit 5).” On the Notice of Disqualification, the Department also wrote: “UMass Lowell start date 11-21-2017 end date 5-16-2020 (Exhibit 5).”
15. The claimant appealed the Notice of Disqualification (Exhibit 6 Page 1).
16. The claimant was originally enrolled in 19 credits for the Spring 2018 Semester. The claimant withdrew from 4 credits. The claimant withdrew from a chemistry class as it was too difficult.
17. In a letter dated March 28, 2018, the Coordinator of Retention Initiatives from the UMass Lowell writes the following:

“I am one of [claimant’s name omitted] academic advisors at UMass Lowell. In keeping with information she indicated needed to document, I can offer the following:

The Fall 2018 concludes on December 21, 2018. The Spring 2019 semester concludes on May 11, 2019, and the Commencement Date is scheduled for May 18th, 2019.

(The source for these statements is:  
<https://www.uml.edu/Register/Calendars/default.aspx>)

According to an Advisement Report, in Fall 2017, [claimant’s name omitted] earned 15 credits. In Spring 2018, which as of now is ongoing, it appears [claimant’s name omitted] would earn 15 credits. She would have 34 credits left to take between the end of this Spring 2018 semester, and the conclusion

of the Spring 2019 semester in order to graduate as of 05/18/2019, which is plausible within the parameters of full-time course scheduling at UMass Lowell (Exhibit 10).”

18. In a letter dated November 2, 2018, the Associate Professor and Chair from UMass Lowell writes:

“This letter is written in reference to [claimant’s name omitted] and her status as a student at UMass Lowell, enrolled in the undergraduate program in Public Health (Bachelor of Science). [claimant’s name omitted] will be registering for 19 credits in the spring semester of 2019.

Upon completion of these 19 credits, the [claimant’s name omitted] will be eligible to graduate in May, 2019.

If you require further information, please don’t hesitate to call. I can be reached at (978)-934-4132 (Remand Exhibit 7).”

19. UMass Lowell requires 120 credits to graduate with a bachelor’s degree.
20. The claimant began her studies at UMass Lowell on September 6, 2017 as a fulltime student.
21. UMass Lowell applied 53 transfer credits and 24 test credits towards the claimant’s bachelor’s degree for a total of 77 credits.
22. The Fall 2017 semester started on September 6, 2017 and ended on December 22, 2017. The claimant earned 15 credits during that semester.
23. The claimant did not take any classes during the Winter 2018 semester. There were no classes available for the claimant to take during this semester towards her program. The claimant does not know when this semester ended and began. Usually the winter session runs from December to January.
24. The Spring 2018 semester began on January 22, 2018 and ended on May 11, 2018. The claimant earned 15 credits during that semester.
25. UMass Lowell has a summer semester. The claimant did not take any classes during the Summer 2018 semester. The claimant’s advisor informed the claimant that she did not have to take any classes during this semester.
26. The Fall 2018 semester began on September 5, 2018 and ended on December 22, 2018. The claimant earned 15 credits during this semester.
27. As of the date of the most recent remand hearing session, the claimant has completed 101 credits toward the completion of her degree.

28. As of the date of the most recent remand hearing session, the claimant is currently taking 19 credits towards her degree.
29. As of the date of the most recent remand hearing session, if the claimant successfully completes all of the courses she is taking during the current semester, the claimant will need zero credits to complete her degree.
30. As of the date of the most recent remand hearing session, the claimant will be required to complete the following courses to complete her degree: HSCI 2520 Physiological Chemistry, HSCI 2540 Physiological Chemistry Lab, PUBH 2050 Social Determinants of Health, PUBH 3020 Health Communication, PUBH 4100 Public Health Capstone, and PUBH 4100 Program Management in health.
31. UMass Lowell has [a] Winter 2019 semester. There were not any classes available for the claimant towards her degree for this semester. The claimant did not take any courses during this semester. The winter sessions usually run from December to January.
32. The Spring 2019 semester began on January 22, 2019 and will end on May 11, 2019. Yes, the required courses are offered during this semester. The required courses and that the claimant is enrolled in for this semester are: HSCI 2520 Physiological Chemistry, HSCI 2540 Physiological Chemistry Lab, PUBH 2050 Social Determinants of Health, PUBH 3020 Health Communication, PUBH 4100 Public Health Capstone, and PUBH 4100 Program Management in health.
33. There are no required courses that the claimant will not be able to complete by the end of the Spring 2019 semester.
34. The claimant anticipates on completing all classes no later than May 11, 2019 at the end of the Spring 2019 Semester.
35. The claimant has not verbally asked a representative from UMass Lowell to participate in the remand hearing session.
36. On December 5, 2018, the claimant mailed to UMass Lowell's Office of the Chancellor a letter, titled Memorandum of Record, listing: "I authorize the full release of my academic record to the Department of Unemployment Assistance or any of their authorized representatives for the purpose of conducting an Unemployment Insurance investigation. My objective is to achieve a speedy resolution, and your participation is required. I hereby notify your office that a representative of the Department will contact this office of the Chancellor on or about December 12, 2018 at 11:00AM. Please be prepared to provide a point of contact for this matter. Your help is appreciated (Remand Exhibit 25 Page 11)." The claimant has not received a response from UMass Lowell.

37. The claimant will complete the program requirements at UMass Lowell on or about May 11, 2019.
38. On the claimant's official transcript with a print date of January 25, 2019, the claimant's total earned credits listed are listed as 122 (Remand Exhibit 23). The claimant will graduate with more than 120 credits. Not all of the 122 credits can be counted towards the claimant's degree.
39. On UMass Lowell's My Advising Center Academic Summary on-line printout dated December 12, 2018, the claimant is listed as a Senior and Full-Time (Remand Exhibit 13).
40. On the claimant's Spring 2019 electronic My Schedule from UMass Lowell, the claimant is listed as being enrolled in 6 classes for a total of 19 credits (Remand Exhibit 11).
41. In the past, the claimant has never taken and completed 19 credits in the same semester.
42. In an Enrollment Verification form from UMass Lowell dated March 4, 2019 the following date is listed under Expected Completion Date for the claimant: May 25, 2019 (Remand Exhibit 25 Page 10).

### 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 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.

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 she fulfills all of the requirements to receive a training extension.

The claimant's application for Section 30 benefits sought approval to participate in a bachelor's degree program at the University of Massachusetts — Lowell (UML). The claimant submitted three different applications for training benefits. The first, which the DUA received on July 19, 2017, indicated her training would end in May 2020. *See* Hearing Exhibit # 8. The claimant's second G.L. c. 151A, § 30, application was received by the DUA on November 28, 2017, and stated she would complete her degree program on December 21, 2017, claiming that UML does "not report future enrollment." *See* Hearings Exhibit # 1.



The claimant was initially approved for training benefits on December 12, 2017. *See* Hearings Exhibit # 14. However, the approval was only for the period from November 21 through December 21, 2017.

Finally, the claimant's third application for Section 30 benefits was received by the DUA on December 13, 2017. It indicated her training would finish on May 16, 2020. *See* Hearings Exhibit # 3. On January 11, 2018, the agency issued a Redetermination and Notice of Disqualification, revoking the initial approval of training benefits and disqualifying the claimant through May 16, 2020. *See* Hearings Exhibit # 5.

The DUA denied training benefits because the claimant did not establish that she would complete her program within two years, the time frame contemplated by the regulations that provide guidance for implementing G.L. c. 151A, § 30(c). *See* Hearings Exhibit # 4.

In this case, we are concerned with 430 CMR 9.05(2)(c), which provides, in pertinent part.,

“Training programs must ... [b]e completed within two years...”

After the initial hearing, the review examiner affirmed the DUA's denial of Section 30 benefits. We remanded the case to allow the claimant an opportunity to provide evidence that she could complete her program within two years. After remanding the case for additional evidence to corroborate the claimant's program and progress within her program, we conclude that the claimant meets the requirements for training benefits.

After remand, the review examiner found that the claimant requires 120 credits to complete her degree at UML. While UML accepted 77 transfer and “test” credits from prior college courses toward the claimant's degree, not all of them could be specifically applied to her major.

As of the date of the last remand hearing session (March 7, 2019), the claimant was enrolled in the spring 2019 semester. She had completed 101 of the 120 credits she needed for her degree. *See* Consolidated Finding # 27. She was taking six courses for 19 credits that she needed in order to graduate in May 2019. *See* Consolidated Finding # 28. The review examiner found the claimant had not successfully completed 19 credits in a semester before, withdrawing from four credits during the spring 2018 semester because a chemistry class was too difficult. *See* Consolidated Findings ## 16 and 41, and Remand Exhibit # 23.

In order to obtain the best evidence relative to the claimant's ability to timely complete her training, our remand order sought corroboration under oath from an official at UML that the claimant would be able to successfully complete her program by the end of this semester. *See* Remand Exhibit # 18. We note that it is not uncommon for claimants seeking training benefits to arrange for a faculty advisor or other official who is familiar with them and their program of study to participate briefly by telephone on their behalf. The claimant did not, however, ask anyone from UML to participate in the hearing, instead providing an unsworn letter from November, 2018 (Remand Exhibit # 7), and sending “releases” for the DUA and UML to confer with each other (Remand Exhibits # 15 and # 25, p. 11). Despite the claimant's failure in this regard, we believe the findings and record before us suggest that the claimant will timely complete her training program.

The evidence before us indicates that the claimant has maintained a full-time course load while enrolled at UML, and the review examiner found on the basis of substantial and credible evidence that the claimant will complete her program requirements at UML on or about May 11, 2019. We, therefore, conclude as a matter of law that that the claimant will complete her training program within the two-year requirement of 430 CMR 9.05(2)(c).

The review examiner's decision is reversed. The claimant is entitled to receive an extension of up to 26 times her weekly benefit rate while attending this program between November 21, 2017, and May 11, 2019, pursuant to G.L. c. 151A, § 30(c), if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - April 29, 2019**



Paul T. Fitzgerald, Esq.  
Chairman



Charlene A. Stawicki, Esq.  
Member

Member Michael J. Albano 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](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