

Claimant ineligible for training benefits, where his mortuary training provider did not apply to be a Section 30-approved program with the DCS, and is not listed in MOSES or JobQuest.

**Board of Review
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Issue ID: 0024 7324 00

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 affirm.

The claimant became separated from employment and filed a claim for unemployment benefits on August 14, 2017, which was ultimately approved by the DUA. On February 6, 2018, the claimant mailed an application to the DUA for an extension of benefits to attend a training program, which the agency subsequently denied on March 16, 2018. 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 initial determination and denied training benefits in a decision rendered on May 10, 2018. We accepted the claimant's application for review.

Training benefits were denied after the review examiner concluded that the claimant did not timely file his application for training benefits or meet any of the tolling provisions for filing after the 20-week deadline, and, thus, the claimant did not meet the requirements for training benefits pursuant to G.L. c. 151A, § 30(c), and 430 CMR 9.06(3). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we remanded the case back to the review examiner to take additional evidence regarding the claimant's training program, particularly whether the training provider had applied for this program to be recognized as an approved training program with the DUA; as well as evidence regarding when the claimant initially received unemployment benefits. Thereafter, the review examiner conducted a remand hearing, which the claimant attended, and issued his 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 because he filed after the 20-week deadline without meeting any of the tolling exceptions set forth in the applicable regulations, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant worked as a furniture manager for an office products company. He was separated in August 2017 due to a lack of work. The claimant applied for unemployment benefits and was determined to have a benefit year beginning August 6, 2017.
2. The claimant has a bachelor's degree in criminal justice from Westfield State College. He graduated in 1987.
3. The claimant worked at the office products company for 18 years. His work experience was in working with customers to procure and deliver specialized furniture products.
4. Approximately 17 years ago, the claimant began part-time employment as an attendant at a funeral home.
5. From his part-time employment the claimant learned of a funeral director program at the Fine Mortuary College. He began taking classes at the college while he worked full-time at the office products company. The claimant's first date of enrollment at Fine Mortuary College was February 22, 2016.
6. The claimant had a problem with his unemployment claim and called customer service. During the call, there was some discussion about his future plans. The claimant told the representative he was in school. The representative told the claimant about the Training Opportunity Program (TOP). He was aware he needed to apply by his 20th compensable week.
7. The claimant believed that there was only one company, which was his former employer, which offered the products and services he was trained in providing. The claimant believed his skills were not transferable to other employers. For this reason and because of poor job prospects, the claimant believed he needed training to obtain employment.
8. The claimant called the Career Center and asked about training. A representative told him they did not have funding for training. He was not advised by a representative at the Career Center or DUA that he needed training to obtain employment.
9. The Applied Science in Funeral Service program at Fine Mortuary College is not an approved program in MOSES or Job Quest. They have not applied to be considered eligible for training benefits.
10. Fine Mortuary College schedules classes on a quarterly session basis. They schedule classes for each of the spring, summer, fall and winter quarters. The

- quarters are 10 weeks. Attendance in 6 credit hours of class is considered full-time.
11. During the summer session of 2017, from August 27, 2017 to November 4, 2017, the claimant completed two three-credit classes for a total of six credits.
 12. During the winter session of 2017, from November 12, 2017 to January 27, 2018, the claimant completed two three-credit classes for a total of six credits.
 13. The claimant waited until the Fine Mortuary College published its spring curriculum before he knew what classes he could take. The curriculum was published by the school in late January 2018.
 14. During the spring session of 2018, the claimant completed three three-credit classes for a total of nine credits.
 15. During the summer session of 2018, the claimant completed two three-credit classes for a total of six credits.
 16. The claimant needs 67 credits to complete his program. The claimant has earned 51 credits. He needs 16 credits to complete [the program requirements].
 17. The claimant is currently enrolled in the fall session which began on August 19, 2018 and completes October 27, 2018. He is taking microbiology and clinic I for a total of 8 credits.
 18. The claimant will take a review class and clinic II for a total of 9 credits during the winter 2018 session. The session begins November 4, 2018 and completes January 19, 2019.
 19. The claimant will take a final exam during the last week of January 2019. He will also take state and national licensing exams.
 20. The DUA issued the claimant his first check for benefits on October 19, 2017. The claimant's 20th compensable week after October 19, 2017 was the week ending March 3, 2018.
 21. On February 6, 2018 the claimant mailed his TOP application to the DUA based on his participation in the Applied Science in Funeral Service program at Fine Mortuary College.
 22. On March 16, 2018, the DUA sent the claimant a Notice of Disqualification finding him ineligible for TOP benefits because his application was submitted beyond his 20th compensable week. The claimant's appeal is from this Notice.

23. The DUA also sent the claimant a Notice of Approval within Section 30 and 24(b) of the Law finding he was not required to complete a work search from February 26, 2018 through February 1, 2019.

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 ultimate 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 which 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.

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 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 regulations specifying circumstances when the 20-week deadline may be tolled are set forth in 430 CMR 9.06(3).

The claimant's application for training benefits was initially denied because both the adjudicator and the review examiner concluded that the claimant failed to meet the 20-week deadline required by the statute, and failed to satisfy any of the tolling provisions set forth in 430 CMR 9.06(3). But neither the adjudicator nor the review examiner followed the proper procedure for calculating the claimant's 20th compensable week.

On January 31, 2018, the Board issued a decision directing that the 20-week deadline to apply for training benefits commences with the date when the DUA issues the claimant his first unemployment check on his claim. *See* Board of Review Decision 0022 2673 94 (Jan. 31, 2018).

Using the proper standard in this case, where the DUA issued the claimant his first check for benefits on October 19, 2017, his first compensable week was the week ending October 21, 2017. Consequently, his 20th compensable week was the week ending March 3, 2018. Where the claimant mailed his training application to the DUA on February 6, 2018, he filed well before the end of his 20th compensable week. Thus, we conclude that the claimant's application was timely filed, as a matter of law.

As noted above, the regulations implementing training benefits require consideration of training providers' (and their programs') qualifications, as well as claimants' participation in *qualifying* programs. In order to ensure training providers adequately prepare claimants to rejoin the workforce, their training programs must demonstrate measurable standards, and training providers must apply to the Division of Career Services (DCS) for their programs to be approved for training benefits. The procedures and standards for approving training programs are enumerated within 430 CMR 9.05.

After remand, the review examiner found that the Fine Mortuary College has not applied to be a DCS-approved provider, and the claimant's chosen program is not an approved program in the Massachusetts One-Stop Employment System (MOSES) or in JobQuest. *See* Finding # 9 and Remand Exhibits ## 6 and 9. We, therefore, conclude as a matter of law that the claimant does not meet the requirements of G.L. c. 151A, § 30(c), and 430 CMR 9.00 *et seq.*, because his training program is not a DCS-approved program.

The review examiner's decision is affirmed. The claimant is not 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).

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 28, 2018



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

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