

Claimant was approved for Section 30 benefits to attend a training program, but failed to start that program and failed to promptly inform the DUA that she never started. She did not establish good cause for failing to timely seek approval for a second training program after her 20th compensable week. Given that the issue on appeal is whether the claimant is eligible for Section 30 benefits, she may be disqualified on this ground even where the adjudicator's determination and the review examiner's original decision did not address the timeliness of the second application.

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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) to deny an extension of benefits to attend a training program. The extended benefits were denied pursuant to G.L. c. 151A, § 30(c), and 430 CMR 9.05(2)(a) and 9.06(4), on the grounds that the claimant was only entitled to one approved training program for each unemployment benefit year claim, and the claimant's second chosen program was not approved for training benefits.

The claimant had filed a claim for unemployment benefits on May 8, 2017, which was subsequently approved by the agency. On August 3, 2017, the claimant mailed an application to the DUA, seeking an extension of benefits to attend a training program from September 5, 2017, through June 28, 2019 (hereinafter, "Section 30 benefits" or "training benefits"). That application for training benefits was approved on or about August 25, 2017. However, the claimant never began attending that training program.

On or about March 15, 2018, the claimant submitted a second application for training benefits to the DUA to attend a different training program. On April 6, 2018, the DUA issued a Notice of Disqualification denying an extension of training benefits because the claimant's program was not Section 30-approved, and because the claimant was only entitled to one approved training program per unemployment benefit claim year. The claimant appealed to the DUA Hearings Department. Following a hearing on the merits, the review examiner affirmed the agency's initial determination in a decision rendered on May 19, 2018. The claimant sought review by the Board, which denied the appeal, and the claimant appealed to the District Court, pursuant to G.L. c. 151A, § 42.

On December 31, 2018, the District Court ordered the Board to obtain further evidence. Consistent with this order, we remanded the case to the review examiner to take additional

evidence concerning whether the second program met the criteria for approval pursuant to 430 CMR 9.05(2). The claimant attended the remand hearing.

After the review examiner returned her consolidated findings of fact, we remanded the case back to her to make subsidiary findings of fact from the record concerning certain representations made by the claimant and her attorney during the remand hearing. Namely, that the claimant had informed the DUA “before December” of 2017 that she had not begun her first, approved training program.

The timing of a claimant’s application for Section 30 benefits is statutorily driven, and necessary to establish in order to determine eligibility. During the hearing, the claimant and her counsel represented that the claimant had conveyed documentary evidence to the DUA, and that they had seen said evidence in the hearing record. As a result, the review examiner held the record open after the hearing for the claimant and her counsel to either locate or submit this evidence. As it was initially unclear whether or not they had done so, the Board requested subsidiary findings regarding the claimant’s representations that she had “immediately found another appropriate vocational certificate program” and “timely notified the [DUA] that she was not attending” her initially approved program. *See* Remand Exhibits ## 4B–4C. Thereafter, the review examiner re-issued her consolidated findings of fact and credibility assessment.

The issue before the Board is whether the claimant established, through substantial and credible evidence, that she is entitled to Section 30 benefits for the second program for which she applied.

After reviewing the entire record, including the recorded testimony and evidence from the initial and remand hearings, the review examiner’s decision, the claimant’s appeal, the District Court’s Order, and the consolidated findings of fact and credibility assessment, we affirm the review examiner’s decision to deny the claimant’s second application for training benefits.

Findings of Fact

The review examiner’s consolidated findings of fact and credibility assessment, which were issued following the District Court remand, are set forth below in their entirety:

1. On May 8, 2017, the claimant filed an initial claim for unemployment benefits, effective May 7, 2017. The benefit year end date (the BYE) of the claim is May 5, 2018.
2. In August 2017, the Department of Unemployment Assistance (DUA) approved the claimant under Section 30(c) of the Law for an Associate Degree Program in Social Services at the Community College of Rhode (CCRI) Island from September 5, 2017 through June 28, 2019.
3. On May 23, 2017, the DUA issued the claimant her first unemployment benefit check.
4. The 20th compensable week of the claim was the week ending October 7, 2017.

5. On January 3, 2018, the claimant electronically submitted a completed Section 30-Length of Training Break questionnaire to the DUA. The claimant reported she was on a pre-scheduled school break; her last day of class was December 15, 2017; she was scheduled to begin class again on January 22, 2018; and she was not working. (Remand II Exhibit 5a and 5b)
6. The claimant first informed the DUA she was not attending her approved training on February 21, 2018 via an online questionnaire. The claimant did not indicate when she stopped attending school.
7. On February 21, 2018, the claimant electronically submitted a Section 30-Scheduled Training Attendance questionnaire to the DUA. The claimant reported she would attend classes beyond her Agency approved date. She answered, “Yes,” to the question; “Are you in school at least 20 hours per week, OR enrolled in at least 12 credit hours per semester?” The claimant reported the reason she would attend beyond the approved date was, “My financial aid did not come through in time. I was dropped from all my classes and had to register for summer classes. I do not know my schedule yet.” The claimant also reported she was not working. (Remand II Exhibit 6a and 6b)
8. On February 25, 2018, the claimant electronically submitted a completed Section 30-Scheduled Training Attendance questionnaire to the DUA. The claimant reported that she expected to complete her school June 1, 2021. She also reported, “Due to financial aid issues I have hade [sic in original] to change my schedule to summer 2018. I do not have any other details.” The claimant also reported she was not working. (Remand II Exhibit 7a and 7b)
9. On March 4, 2018, the claimant electronically submitted a completed Section 30-Scheduled Training Attendance questionnaire to the DUA. The claimant reported that she wouldn’t attend school beyond her approved end date; she was not in school 20 classroom hours per week or enrolled in at least 12 credit hours per semester; and she was not working. (Remand II Exhibit 8a and 8b)
10. On March 6, 2018, the claimant electronically submitted a response to the DUA’s request for a withdrawal letter or revised TOP application. The claimant reported she was enrolled in the summer 2018 semester at CCRI and she would earn 12 credits for the summer. She also reported she was not currently taking classes and did not attend school from September 5, 2017 through December 22, 2017 because she received her financial aid late. (Remand II Exhibit 9)
11. Prior to March 6, 2018, the claimant had not notified the DUA that she did not attend CCRI from September 5, 2017 through December 22, 2017.
12. On March 7, 2018, the claimant verbally notified a DUA employee that she was attending class on March 5, 2018. (Remand II Exhibit 3a and 3b)

13. On March 11, 2018, the claimant electronically submitted a completed Section 30-Scheduled Training Attendance questionnaire to the DUA. The claimant reported she would be attending training, which she would complete on April 30, 2018. She said, "I began a [sic in original] Employment and Training Workforce program on 3/5/2018." (Exhibit 9a and 9b)
14. On March 15, 2018, the claimant uploaded a second Training Opportunities Program (TOP) Application to attend the "Essential Skills, Digital Literacy, Banking and Cash Handling, Call Center Training, Job Readiness and Resume Writing Career Academy" program (the "training program") offered by Connecting for Children & Families, at [Address A] and offered in partnership with the Rhode Island Department of Education and Industry, the Rhode Island Department of Labor and Training and non-profit organizations. The claimant would attend from March 5, 2018 until May 4, 2018. The application was signed and dated by the claimant and the training program's Director on March 12, 2018. The classroom hours for the training program were Monday through Friday from 8:30am to 3:30pm. The DUA also received the claimant's TOP application on March 19, 2018 via U.S. Mail. [Exhibits 12 and 13]
15. On March 18, 2018, the claimant electronically submitted a completed Section 30-Schedule Training Attendance questionnaire to the DUA. The claimant reported she was in a new training program and had uploaded and mailed the information. (Exhibit 10a and 10b)
16. On March 30, 2018, the claimant electronically submitted a hardship response statement to the DUA. In the statement, the claimant reported that she worked from January 2, 2018 through February 12, 2018. The claimant also reported she enrolled in her second training program on February 26, 2018 and began it on March 5, 2018. (Exhibit 16)
17. On March 20, 2018, the claimant electronically submitted a Section 30-Waiver Status questionnaire to the DUA. The claimant reported that she didn't file her TOP application on time because, "I was fired from my job and enrolled in a training program to improve my employment opportunities." (Exhibit 11).
18. On March 30, 2018, the claimant electronically submitted a statement to the DUA that she was obtaining a letter that day "from CCRI on letterhead verifying I did NOT attend any classes at CCRI and was dropped due to non-payment." (Remand II Exhibit 10)
19. On April 1, 2018, the claimant electronically submitted a letter from CCRI dated April 30, 2018. The letter stated that the claimant "is NOT enrolled" at the Community College of Rhode Island in the Administrative Office

- Technology Certificate Program for the Spring 2018 semester, which extended from January 22, 2018 through May 13, 2018. (Exhibit 6)
20. The claimant did not submit a TOP application to the DUA to attend the Administrative Office Technology Certificate Program at CCRI for the Fall 2017 or Spring 2018 semester.
 21. On April 6, 2018, the DUA issued a Corrected Notice of Approval to the claimant under Section 30(c) of the Law for an Associates' Degree Program in Social Services at CCRI from September 5, 2017 through a "REVISED END DATE TO 12-22-2017." (Exhibit 3)
 22. On April 6, 2018, the DUA issued the claimant a Notice of Disqualification under Section 30 and 24b of the Law starting [the] week of December 24, 2017 due to a change in her enrollment status. (Exhibit 7)
 23. On April 6, 2018, the DUA issued the claimant a Notice of Disqualification under Section 30 of the Law for the Program which runs from March 5, 2018 through May 4, 2018, because it was not an approved Program and the claimant had already been approved for the Associates Degree Program in Social Services offered by the Community College of Rhode Island from beginning September 5, 2017. (Exhibit [17a and 17b])
 24. The annual placement rate for the training program participants into jobs related to this training area was 78%.
 25. At the initial hearing, the claimant submitted two letters from CCRI relative to her enrollment. One letter stated that the claimant was not enrolled at the Community College of Rhode Island in the Administrative Office Technology Certificate Program for the fall 2017 semester, which extended from September 5, 2017 through December 22, 2017. (Exhibit 20a) The second letter stated that the claimant did not pre-register at the Community College of Rhode Island in the Associates in Arts Social Services Program for the summer 2018 semester, which extended from May 21, 2018 through August 12, 2018. (Exhibit 20b)
 26. For the 13 weeks beginning September 10, 2017 through the week ending December 9, 2017, the claimant was paid Regular benefits as Section 30 benefits. [Exhibits 1b through 1d] For the 7 weeks beginning December 10, 2017 through the week ending December 30, 2017 and the week beginning February 11, 2018 through the week ending March 17, 2018, the claimant was paid [sic] "Re-employment Extended Duration" (RED) benefits.
 27. The claimant attended [sic] CCRI in the Associates Degree Program in Social Services from September 5, 2017 through December 22, 2017.

28. During the 2 weeks beginning March 4, 2018 through the week ending March 17, 2018, the claimant attended the second training program she applied for Section 30 benefits.
29. The claimant did not notify the DUA that she was not attending her approved program at CCRI “as soon as [she] found out” that she did not qualify for free tuition as a resident of Rhode Island.
30. The claimant did not inform the DUA before “December” of 2017 that [she] did not have the financial means to attend the training program at CCRI.
31. On July 10, 2018, the claimant’s attorney filed a Complaint for Judicial Review with District Court. The complaint read in part; “Prior to enrolling in the program, however, the Plaintiff became aware that she had received misinformation regarding her eligibility for tuition assistance as well as the applicable tuition rate. As a result, [the claimant] was not able to register and attend the community college. [The claimant] immediately found another appropriate vocational certificate program and enrolled therein. [The claimant] timely notified the Department that she was not attending the community college and instead was going to attend the certificate program.” [Remand Exhibits 4B and 4C]

Credibility Assessment:

The claimant testified that she did not attend CCRI during her approved training dates of September 5, 2017 through December 22, 2017. The claimant also testified that she provided written notice to the DUA that she did not attend prior to December 2017. However, on January 3, 2018, the claimant submitted a written statement to the DUA that she had attended school with her last class being on December 15, 2017. She also reported that she was on a scheduled break and would resume class on January 22, 2018. On February 21, 2018, the claimant submitted a written statement to the DUA, wherein she reported she was in school, but was dropped from all her classes due to the financial reasons.

After a review of the DUA’s records and documentation submitted into evidence by the claimant, this was the claimant’s first notice to DUA that she was not attending her approved program. The claimant first notified the DUA that she did not attend class during the approved dates of September 5, 2017 through December 22, 2017 in a written statement electronically submitted by the claimant on March 6, 2018, which is inconsistent with the claimant’s two previous written statements to the DUA that she was attending during said period.

At the remand hearing, the Review Examiner requested documentation from CCRI that the claimant [timely informed the DUA that she] did not attend approved training from during [sic] the Fall 2017 semester. The claimant testified that the documentation had already been submitted into evidence and did not submit further documentation. The claimant had submitted documentation from

CCRI that confirms that the claimant was not enrolled in its Administrative Office Technology Certificate Program for the dates of September 5, 2017 through December 22, 2017. However, the claimant was not approved for such program, and she did not submit any documentation relative to her enrollment or attendance in her approved training program for the Associates Degree in Social Services. The claimant's attorney submitted a Complaint to District Court, wherein she stated that the claimant learned that she didn't have the financial means to attend CCRI, which prevented her from enrolling and attending there and that the claimant timely notified the DUA of such and immediately found another vocational certificate program, which she enrolled in. The claimant provided a written hardship response statement to the DUA that she enrolled in the vocational program on February 26, 2018 and began on March 5, 2018.

Based on the claimant's written statements to the DUA up until March 6, 2018 that she attended school during the Fall 2017 semester; her failure to submit documentation to establish that she didn't attend the approved training during said time; and the claimant's attorney's Complaint that the claimant enrolled in the second training program immediately after she learned she wouldn't be attending her approved training; it is concluded that the claimant's testimony [that she timely informed the DUA that] she didn't attend the approved training during the dates of September 5, 2017 and December 22, 2017, is not credible.

Relative to when the claimant notified the DUA that she was not attending the approved training; the claimant's first notification to the Agency was on February 21, 2018, which was a month after she was expected to begin the Spring 2018 semester on January 22, 2018. If she didn't begin the classes that semester, she could have notified the DUA well before February 21, 2018 that she wouldn't be attending school. Additionally, if the claimant hadn't attended the approved training, which began on September 5, 2017, she would have had several months to notify the DUA prior to February 21, 2018.

In the claimant's written [questionnaire] to the DUA on January 3, 2018 [Remand II Exhibit 5[a] and 5b], the claimant reported she was not working. However, in her hardship response statement to the DUA [March 30, 2018] she reported that she was employed from January 2, 2018 until February 12, 2018. [Exhibit 16] The claimant again provided inconsistent statements to the DUA.

Ruling of the Board

In accordance with our statutory obligation, we review the record and 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. After such review, the Board adopts the review examiner's consolidated findings of fact and credibility assessment except as follows. Consolidated Finding # 27 inaccurately recited that the claimant attended her associate's degree program at CCRI from September 5, 2017, through December 22, 2017. This is inconsistent with Finding # 10, which found that the claimant had not attended CCRI during that period, and which is corroborated with documents in the record.

In adopting the remaining findings, we deem them to be supported by substantial and credible evidence.

We further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented, although we note that the review examiner omitted the substance of the documents for which she held open the record after remand in the third paragraph, and again omitted the purpose of holding the record open in the fourth paragraph. The review examiner held the record open for documents or citations from the claimant that she had timely informed the DUA of her decision not to attend her approved program at CCRI. The substance of the review examiner's findings and analysis show that the claimant's testimony that she timely informed the DUA that she did not attend the approved program was not credible.

As discussed more fully below, while it appears that the review examiner's consolidated findings of fact support a conclusion that the claimant's second program itself meets the requirements of 430 CMR 9.05(2)(b), we conclude that, because the claimant failed to timely apply for training benefits to attend her second program, she is ineligible for Section 30 benefits to attend that program.

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. 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 guidelines for implementing these training benefits are set forth in 430 CMR 9.00–9.09. These regulations 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 application deadline may be tolled are set forth in 430 CMR 9.06(3).

In the case before us, the claimant timely applied for training benefits to attend a program to earn her associates degree in social services at the Community College of Rhode Island (CCRI), to begin on September 5, 2017, and finish by June 28, 2019. The DUA approved the claimant's application in August 2017. *See* Consolidated Finding # 2. However, the claimant never began her approved program at CCRI. *See* Consolidated Finding # 10.

Notwithstanding the claimant's decision not to attend her approved CCRI program as scheduled, she was paid her regular unemployment benefits as "Section 30 benefits," as recorded in the DUA's UI Online computer database, for the 13 weeks beginning September 10, 2017, through December 10, 2017, and she was paid two weeks of RED (Re-employment Extended Duration) benefits¹, for the weeks ending December 16 and 23, 2017. *See* Consolidated Finding # 26 and Exhibits 1b through 1d.

¹ RED benefits are those additional weeks of training benefits (up to 26 weeks) which a claimant receives when attending an approved Section 30 program.

On March 15, 2018, the claimant applied for training benefits to attend a second program at the NRI Career Academy (NRI) in Woonsocket, Rhode Island, in “Essential Skills, Digital Literacy, Banking and Cash Handling, Call Center Training, Job readiness and Resume Writing Career Academy,” seeking Section 30 benefits from March 5, 2018, through May 4, 2018. *See Consolidated Finding # 14 and Exhibits 12 and 13.*

The claimant’s application to attend the NRI program was denied on April 6, 2018, because the program was not a Section 30-approved program, and it was the claimant’s second training program in her unemployment benefit claim year. *See Consolidated Finding # 23 and Exhibit 17.*

The claimant appealed the denial of training benefits, and a hearing was convened by the DUA review examiner who issued these consolidated findings and credibility assessment. The review examiner’s decision, issued on May 19, 2018, affirmed the denial of training benefits because the NRI program was not an approved Section 30 program. *See Remand Exhibit 1.* The Board denied the claimant’s appeal on June 11, 2018. *See Remand Exhibit 3.*

The claimant filed a complaint in District Court on July 10, 2018. *See Consolidated Finding # 31 and Remand Exhibit 4.* The District Court issued an Order remanding this case to the DUA on December 31, 2018. *See Remand Exhibit 5.*

On March 7, 2019, the review examiner convened a remand hearing addressing issues raised by the District Court. At the remand hearing, the claimant argued that the review examiner improperly asked the claimant when she first informed the DUA that she never began her approved training program at CCRI. At the remand hearing, both the claimant and her attorney contended that the claimant had informed the DUA “in writing” that she had not attended the CCRI program, “as soon as” the claimant found out she would not be able to attend CCRI, and, in any event, “before December” 2017, and that they had seen said document in the hearing record. The review examiner held the record open for a week for the claimant to provide a citation identifying the document in the record or to provide documentation not yet in the record to confirm when she first informed the DUA that she had decided not to enroll in the CCRI program. *See Credibility Assessment, ¶ 3.* The claimant did not provide any further documentation or any citation.

The review examiner returned consolidated findings of fact to the Board, but they did not address the issue raised by the review examiner at the remand hearing, and for which she left the record open for the claimant to answer, which was, “when and how did the claimant first notify the DUA that she did not attend her approved training program at CCRI?”

As the review examiner reminded the claimant at the remand hearing, one of the requirements to qualify for training benefits is that the claimant must apply before the end of her 20th compensable week, or must meet one of the criteria for tolling within 430 CMR 9.06(3). If the claimant had timely notified the DUA that she had not begun the program for which she had been approved for training benefits, and the DUA had failed to enter this notification into the UI Online computer system, then there might be grounds for the 20-week deadline to be tolled.

Because the review examiner's consolidated findings did not address the issue she properly raised during the remand hearing, we remanded the case for subsidiary findings from the record on May 30, 2019. *See* Remand II Exhibits 1 and 2. Our remand order sought specific findings as to when the claimant's 20th compensable week was, and when she first informed the DUA that she had not begun attending the approved training program at CCRI. We also asked the review examiner for a finding regarding whether the claimant notified the DUA that she was not attending her approved program at CCRI "as soon as [she] found out" that she did not qualify for free tuition, and to issue a credibility assessment setting forth her reasons for crediting or not crediting the claimant's representations that she promptly informed the DUA in writing that she did not begin her program at CCRI.

We also asked if the claimant provided the documentary evidence requested by the review examiner at the remand hearing, and, if the claimant had not provided the documents or citations she referenced, we directed the review examiner to: (1) review all of the documents from the initial and remand hearings to determine when and how the claimant first disclosed to DUA that she had not started the program at CCRI; (2) review the communication log for the claimant from the Massachusetts One-Stop Employment System (MOSES), which documents interactions between claimants and Massachusetts career center employees, from the date the claimant filed her claim through the date the DUA received her second application for training benefits (Remand II Exhibit 11); (3) review all of the correspondence and documents sent by the claimant to the DUA and uploaded into her UI Online Fact-Finding Documents folder, from the date she submitted her first application for training benefits through the date the DUA received her second application for training benefits (Remand II Exhibits 4 and 7 through 10); and (4) review all of the Event Log Search results from UI Online from the date the claimant submitted her first application for training benefits through the date the DUA received her second application for training benefits (Remand II Exhibit 3).²

As to the when the claimant first notified the DUA that she had never begun her approved program at CCRI, the review examiner found that the claimant first notified the DUA that she had never actually attended the CCRI program on March 6, 2018.³ *See* Consolidated Findings ## 10 and 11 and Remand II Exhibit 9. The review examiner also found that the claimant did not notify the DUA that she was not attending her approved program at CCRI "as soon as [she] found out" that she did not qualify for free tuition, and the claimant did not inform the DUA before December of 2017 that she did not have the financial means to attend the program at CCRI. *See* Consolidated Findings ## 29 and 30.

The review examiner issued a detailed credibility assessment rejecting as not credible the claimant's various claims that she had "timely" notified the DUA "prior to December 2017" that she had never begun the approved training program at CCRI, citing inconsistent statements made to the DUA about her attendance in the CCRI program and about her employment in early 2018.

² Our remand order for subsidiary findings also asked for findings regarding whether the claimant received benefits characterized in UI Online as "Section 30" or "RED" benefits, to incorporate into the record the claimant's responses to two DUA questionnaires which were not yet in evidence, *see* Remand II Exhibits 5 and 6, and to make additional findings regarding representations made by the claimant to the DUA in Exhibit 16.

³ The claimant first told DUA that she was not attending her training program on February 21, 2018. *See* Findings ## 6 and 7. But, as the review examiner found, the claimant did not tell the DUA when she had stopped attending the program, nor did she disclose that she had never even begun the program.

Such assessments are within the scope of the fact finder's role, and, unless they are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. *See School Committee of Brockton v. Massachusetts Commission Against Discrimination*, 423 Mass. 7, 15 (1996). It is also well established that a review examiner is not required to believe self-serving, unsupported, evidence, even if it is uncontroverted by other evidence. *McDonald v. Dir. of Division of Employment Security*, 396 Mass. 468, 470 (1986).

Based on her credibility assessment, the review examiner rendered detailed findings regarding a series of representations the claimant made to the DUA that, at best, obscured the fact that she had never actually attended the training program for which she had been approved, and which also failed to accurately report that she had been employed during January and February, 2018.⁴ Specifically, she found as follows.

- On January 3, 2018, the claimant returned a Section 30 questionnaire telling the DUA that she was on a break from school, that her last day of classes was December 15, 2017, that classes were scheduled to resume on January 22, 2018, and that she was not working. *See Consolidated Finding # 5 and Remand II Exhibit 5*. Although the claimant never began her program at CCRI, her responses to this questionnaire implied that she had attended classes through December 15, 2017, and would resume them on January 22, 2018. Further, the claimant later informed the DUA that she had begun working on January 2, 2018.
- On February 20, 2018, the claimant returned a Section 30 questionnaire telling the DUA that she was in school at least 20 classroom hours per week or 12 credit hours per semester, that she “was dropped from all my classes and had to register for summer classes,” and that she was not working. *See Consolidated Finding # 7 and Remand II Exhibit 6*. The review examiner found that this was the first time the claimant informed the DUA that she had “stopped” attending classes. However, the record establishes that the claimant was not actually attending school at that time, that she did not tell the DUA when she had “stopped” attending school, and that she again failed to clearly state that she had never actually started the CCRI program.
- On February 25, 2018, the claimant returned a Section 30 questionnaire telling the DUA that she would attend training beyond her approved end date, that she expected to complete her training on June 1, 2021, that she had to change her schedule to Summer 2018 due to financial aid issues (providing no further details), that she was not in school at least 20 classroom hours per week or 12 credit hours per semester, and that she was not working. *See Consolidated Finding # 8 and Remand II Exhibit 7*.
- On March 4, 2018, the claimant returned a Section 30 questionnaire telling the DUA that she would not attend school beyond her approved end date, that she was not in school at least 20 classroom hours per week or 12 credit hours per semester, and that she was not working. *See Consolidated Finding # 9 and Remand II Exhibit 8*.

⁴ We note that most of the DUA questionnaires filled out by the claimant and returned to the agency include notice to the claimant, “A new training application, copy of school verification letter, attendance records and proof of grades are required in order to determine whether you are eligible for an extension of school benefits.” *See Exhibits 9b and 10b; Remand II Exhibits 5b, 6b, 7b, and 8b*.

- On March 6, 2018, the claimant replied to a questionnaire telling DUA that she was enrolled for the Summer 2018 semester, planning to take 12 credits for the summer term at CCRI, but that she was “NOT currently taking classes there.” She also informed DUA that she “did NOT attend school previously due to receiving my financial aid late.” *See Consolidated Finding # 10 and Remand II Exhibit 9.* The review examiner found that this was the first time the claimant expressly told the DUA that she had not attended her approved program at CCRI at all.

Prior to March 6, 2018, the review examiner found four separate instances where the claimant made representations to the DUA that failed to explicitly state that she had never actually started her program at CCRI. It was only after the claimant began her second program at NRI on March 5, 2018, and sought training benefits to attend that program that she eventually disclosed she had never begun taking classes at CCRI.

After March 6, 2018, the review examiner’s findings regarding the claimant’s representations to the DUA were geared toward the claimant’s efforts to secure training benefits to attend her second program at NRI.

- On March 7, 2018, the claimant informed a DUA employee that she was attending class on March 5, 2018. The DUA employee noted, “Gave [claimant] section 30 department.” *See Consolidated Finding # 12 and Remand II Exhibit 3.*
- On March 11, 2018, the claimant provided a statement telling the DUA that she “began a [sic] Employment and Training Workforce program on 3/5/18,” which would be finished by April 30, 2018. *See Consolidated Finding # 13 and Exhibit 9.* Thereafter, on March 15, 2018, the claimant submitted her second application for training benefits to attend the NRI program. *See Consolidated Finding # 14 and Exhibits 12 and 13.*
- On March 18, 2018, the claimant returned a Section 30 questionnaire telling the DUA that she was “in a new training program and have uploaded and mailed the information.” *See Consolidated Finding # 15 and Exhibit 10.*
- On March 20, 2018, the claimant returned a questionnaire telling the DUA that she “was fired from my job and enrolled in a job training program to improve my employment opportunities.” *See Consolidated Finding # 17 and Exhibit 11.*
- On March 30, 2018, the claimant provided a written statement telling the DUA that she had worked from January 2, 2018, through February 12, 2018. She also reported that she enrolled in her second training program on February 26, 2018, and began attending the second program on March 5, 2018. *See Consolidated Finding # 16 and Exhibit 16.*⁵

⁵ Leading up to the claimant’s March 30, 2018, letter to the DUA were telephone conversations with DUA staff, who noted that they cautioned the claimant that “different programs are not always approvable” on March 26, 2018 (Exhibit 4b), and that the claimant called the same employee back on March 29 (Exhibit 8c). DUA staff further noted on March 30, 2018, that the “claimant has failed to sent I [sic] a withdrawal letter, claimant has not made it clear if he [sic] ever start [sic] school at [CCRI],” and the DUA could “not resolve this issue until withdrawal letter from [CCRI] is received.” *See Exhibit 8c.* These documents, while not explicitly incorporated into the review

Even when the claimant secured letters from CCRI indicating that she had not attended classes there, the letters did not represent the claimant's change in status entirely accurately. The claimant first submitted a letter from CCRI on March 30, 2018, that indicated she had not enrolled in the CCRI "Administrative Office Tech." program for the Spring 2018 term. *See* Consolidated Finding # 18 and Exhibit 10. But the claimant had been approved for a CCRI associate's degree in social services program, not an administrative certificate program.⁶

The claimant's second application for training benefits to attend the NRI program was initially denied because the adjudicator concluded that the NRI program was not an approved training program for Section 30 benefits, and because the claimant had been previously approved for the CCRI program, so she was not entitled to a second program. *See* Consolidated Finding # 23 and Exhibit 17. The review examiner affirmed the denial of training benefits, noting that, although the claimant had not attended the CCRI program, her second program was still not approved for Section 30 benefits.

As to the timeliness of this NRI Section 30 application, the review examiner found that the claimant's 20th compensable week was the week ending October 7, 2017. *See* Consolidated Finding # 4. Where the claimant filed her NRI application on March 15, 2018, her application was not timely filed before the end of her 20th compensable week.

The claimant has asserted that the timeliness of her second application is not properly before the DUA and the Board. However, the claimant fails to cite any authority to support her argument and her objection is incorrect as a matter of law.

The claimant's right to appeal the disqualifying determination, as well as the conduct of her first level unemployment appeal hearing, are prescribed under G.L. c. 151A, § 39(b), which states in relevant part as follows:

The manner in which disputed claims shall be presented, and the conduct of the hearings, shall be in accordance with chapter thirty A, and such other procedures as prescribed by the commissioner which are not inconsistent with chapter thirty A. Such procedures shall include provisions for the following:

- (1) reasonable notice of the time and place of the hearing to all parties in order to permit adequate preparation;
- (2) notice of the issues to be considered thereat;
- (3) the right of representation by an agent, counsel, or advocate;

examiner's findings, are part of the unchallenged evidence introduced at the hearing and placed in the record and 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).

⁶ Subsequent letters from CCRI obtained by the claimant and sent to the review examiner after her initial hearing in this case, dated May 10, 2018, indicated that she had not enrolled in the CCRI *certificate* program for the Fall 2017 term, and was not pre-registered in the associate's degree program for the Summer 2018 term. *See* Exhibit 20.

(4) the right to produce evidence and offer testimony, examine and cross-examine witnesses; . . .

The decision of the commissioner or his authorized representative shall be based solely on the testimony, evidence, materials and issues introduced at the hearing. . . .

There is nothing in G.L. c. 151A, § 39(b), or in the regulations that govern unemployment appeal proceedings under G.L. c. 30A, that restricts a review examiner's authority in an appeal decision to the adjudicator's factual basis for the underlying eligibility determination. *See* 801 CMR 1.02. The legal issue before the DUA adjudicator was whether the claimant was eligible for benefits pursuant to G.L. c. 151A, § 30(c). The same legal issue came before the review examiner on appeal and was noticed to the claimant in advance of the hearing. *See* Exhibit 19.⁷

Relying upon additional evidence and alternate grounds for disqualification, which may not have been initially presented or made clear to the DUA adjudicator, is nothing new. Consider, for example, the Supreme Judicial Court's decision in Jean v. Dir. of Division of Employment Security, 394 Mass. 225 (1985). In that case, the DUA's determination disqualified the claimant for being intoxicated at work and using foul language. *Id.* at 227. On appeal, the hearing notice stated merely that the issue was whether the claimant's discharge was attributable to deliberate misconduct in wilful disregard of the employer's interest. *Id.* During the unemployment hearing, the employer clarified that the claimant was discharged for leaving the plant without permission and for insubordination. *Id.* The Court upheld the hearing examiner's decision disqualifying the claimant for leaving the premises without permission and insubordination.⁸ *Id.* at 227.

The timeliness of a claimant's application for training benefits is a statutory requirement, and thus it is proper to consider when determining whether or not a claimant is eligible for training benefits. The statute requires that the claimant apply for training benefits within a prescribed 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; . . .

⁷ Exhibit 19 is the hearing notice referencing Section 30 and 430 CMR 9.00 — "Whether the claimant's application for Section 30 training shall be approved and, if so, whether the claimant is entitled to additional benefits of up to twenty-six times his/her benefit rate" as the issue to be heard.

⁸ The Board of Review had denied review, in effect adopting the review examiner's decision. *Id.* at 226.

Where the claimant merely argues that the timeliness of her second application for training benefits was not properly before the review examiner, she has failed to establish that she meets any of the reasons for tolling the 20-week requirement under 430 CMR 9.06(3).

Consistent with the District Court's order, the review examiner also considered a document submitted on February 21, 2019, (almost a year after the claimant began the program at NRI) by the DUA Administrative Officer who oversees approval of training programs for the DUA and found that the NRI program has a 78% job placement rating. *See* Consolidated Finding 24 and Remand Exhibit 8. Although the NRI program meets the general criteria of 430 CMR 9.05(2)(a) through (e), the claimant is nevertheless ineligible for training benefits because her application was not timely filed.

In sum, the claimant was approved to attend a training program at CCRI, which she never began. Rather than timely and candidly notifying the DUA that she never started her program, she certified for Section 30 benefits and failed to formally advise the agency that she had never started the approved program at CCRI until March 6, 2018 — after she had already begun a second training program, which had not been Section 30 approved at the time.

Additionally, between her approval for training benefits in August, 2017, and her eventual disclosure on March 6, 2018, the claimant provided a series of misleading statements to the agency that suggested at least some level of ongoing attendance at her CCRI program. After applying for training benefits to attend the NRI program in March, 2018, and being denied training benefits to attend that program, the claimant began making representations that she had notified the DUA in writing that she had not started her CCRI program at various times prior to December, 2017. These claims were also the basis for her appeal to the District Court.

Finally, when asked at the remand hearing to produce documentation confirming when she advised the DUA that she had not begun the CCRI program, the claimant and her counsel contended the documents were in evidence. The review examiner gave the claimant additional time after the remand hearing to supply citations to the record, or further documents, to support her claims that she timely notified the DUA in writing when she failed to start the CCRI program. After the claimant failed to supply any corroborating evidence to the review examiner, we directed the review examiner to scour DUA electronic records to see when the claimant first disclosed to the agency that she never began her program at CCRI. There is no substantial and credible evidence that the claimant notified the DUA that she had not actually attended the CCRI program prior to March 6, 2018.

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.*

The review examiner's decision is affirmed. The claimant is not entitled to receive an extension of up to 26 times her weekly benefit rate while attending the NRI training program pursuant to G.L. c. 151A, § 30(c), from March 5, 2018, through May 4, 2018.

BOSTON, MASSACHUSETTS
DATE OF DECISION - July 8, 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

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