

Claimant is eligible for training benefits where she provided evidence that the program has been approved for Section 30 benefits in JobQuest and MOSES, and where she established that she will take 12 credits per semester and will finish her program within one year.

**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
Michael J. Albano
Member**

Issue ID: 0025 0958 78

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 November 9, 2017, which was ultimately approved by the DUA. On March 29, 2018, the claimant filed an application with the DUA for an extension of benefits to attend a training program, which the agency eventually denied on April 14, 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 24, 2018. We accepted the claimant's application for review.

Training benefits were denied after the review examiner concluded that the claimant's chosen program was not an approved training program and, thus, the claimant did not meet the requirements for training benefits pursuant to G.L. c. 151A, § 30(c), and 430 CMR 9.05(2)(a). 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 program itself had actually been approved for training benefits. Thereafter, the review examiner conducted a remand hearing, which the claimant attended, and 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 because her chosen program had not been approved for training benefits, 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 filed a claim for unemployment benefits effective 11/05/2017.
2. In approximately December 2017 or January 2018, the claimant went to the Quincy career center where a representative informed the claimant about the Training Opportunities Program (Section 30).
3. The claimant downloaded a Section 30 application from her UI Online account.
4. The claimant searched online about how to find TOP Section 30 preapproved programs.
5. The claimant selected the Web Development Certificate program at Bunker Hill Community College (the program). The claimant completed part A of the Section 30 application and signed it on 03/28/2018.
6. The claimant hand delivered the Section 30 application to Bunker Hill Community College for completion. The Bunker Hill Community College Special Program Coordinator (coordinator) completed part C of the Section 30 application and signed it on 03/29/2018.
7. The claimant hand delivered the Section 30 application to the Department of Unemployment Assistance (DUA) walk in center in [City A] on 03/29/2018.
8. The Section 30 application reported that the program began on 06/01/2018 and ended on 08/30/2019.
9. The program is MOSES ID number 1106572.
10. The program was approved in MOSES under Section 30 for the period of 01/15/2016 to 06/30/2017.
11. On 04/14/2018, the DUA issued the claimant a Notice of Disqualification pursuant to Section 30 of the Law.
12. The claimant is not aware of any other MOSES ID number for the program. As of 05/23/2018 (the date of the original hearing), the claimant was unaware of whether the DUA approved the program for the 2018 year.
13. As of 05/08/2018, JobQuest did not reflect a Section 30 approval for MOSES ID number 1106572.
14. As of 05/08/2018, JobQuest did not reflect a Section 30 approval for the program (for any other MOSES ID number).

15. As of 08/16/2018 (the date of the remand hearing), the claimant was participating in the program and maintaining a 4.0 grade point average.
16. The claimant began the program on 06/01/2018. The claimant has twelve (12) credit hours to complete in the fall 2018 semester and twelve (12) credit hours to complete in the spring 2019 semester. Because the claimant has tested out of two (2) prerequisite courses and expects to test out of a third, the claimant anticipates completing the program at the end of the spring 2019 semester (by 05/30/2019).
17. Upon completion of the program, the claimant will earn a Web Development Certificate.
18. Bunker Hill Community College applied for the program to be a Section 30-approved program. The coordinator mistakenly reported in the TrainingPRO system that the program was sixteen (16) weeks in length. The program is actually fifty two (52) weeks in length. It is unknown when Bunker Hill Community College submitted its application.
19. Over two hundred (200) students enrolled in the program during the last completed program year. Eighty (80) percent of those students entered employment within six (6) months of completing the program.
20. On an unknown date, the claimant spoke to the coordinator about the discrepancy in weeks between the weeks applied for and the length of the program. The coordinator amended the information in TrainingPRO to reflect the correct program length of fifty two (52) weeks.
21. As of 08/16/2018, the program was approved for training benefits. Fifty two (52) weeks is the average number of weeks for which the program is approved.
22. The claimant is enrolled in a fifty two (52) week, or twelve (12) month, program.
23. As of 08/16/2018, Bunker Hill Community College's application was approved for the program to be a Section 30-approved program for the program beginning on 06/01/2018.
24. The claimant has paid for the program herself, out-of-pocket. The claimant is interested in grants to assist in paying for the program. The claimant has not received tuition assistance through the career center to attend the program under the Workforce Investment Act of the Workforce Innovation and Opportunity Act.

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 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 regulations that govern training benefits establish both procedures and standards for approving training programs, as well as the eligibility criteria for claimants seeking to participate in such programs. *See* 430 CMR 9.01. The procedures and standards for approving training programs are enumerated in 430 CMR 9.05.

One requirement that training programs must meet is to demonstrate that trainees will likely be able to quickly find employment in their new chosen field after completing the program. 430 CMR 9.05(2) states, in relevant part, as follows:

Training programs must meet certain measurable standards as set forth [below]:
(b) Have achieved ... an average placement rate in full time or part time (20 hours per week or more) training related employment of 70% during the most recent 12 month period for which such data is available, ...

The claimant's application for training benefits was initially denied because, at the time she applied for these benefits on March 29, 2018, the program's eligibility with DUA appeared to have lapsed. *See* Hearings Exhibit # 3. Subsequently, the review examiner affirmed the denial of training benefits because as of the initial hearing on May 23, 2018, she found no evidence that the claimant's chosen program was a DUA-approved training program at the time.

As noted above, the regulations implementing training benefits require consideration of the programs' qualifications, as well as claimants' participation in *qualifying* programs. In order to ensure programs adequately prepare claimants to rejoin the workforce, the programs themselves must demonstrate measurable standards. However, since there were questions about whether the program was actually approved for training benefits, and whether the claimant's program was 16 weeks or 15 months in duration, we remanded the case for additional evidence.

Specifically, the claimant's appeal to the Board attached a printout from the DUA's JobQuest database showing that that the course in which she chose to enroll – the Web Development

Certificate Program at Bunker Hill Community College (BHCC) (Course ID# 1106572) – *was* approved for Section 30 benefits from June 1 through August 30, 2018.¹

At the remand hearing, the claimant submitted a document she obtained from BHCC staff showing the program had been approved for Section 30 benefits as of June 1, 2018. *See* Remand Exhibit # 7. The claimant also provided sworn testimony from a BHCC program coordinator, who confirmed that the claimant will attend the program for 52 weeks, and that the program has been approved for Section 30 benefits.

After remand, the review examiner found that the claimant is enrolled in a 52-week program, and that her chosen program was approved for training benefits.² The claimant began her program on June 1, 2018, and plans to complete it by May 30, 2019, so she will complete the program within the time parameters set forth in 430 CMR 9.05(2)(c). She will take 12 credits in each of the two semesters for which she will be enrolled, so the program is considered full-time, pursuant to 430 CMR 9.05(2)(b)(1).

We, therefore, conclude as a matter of law that the claimant satisfied the requirements of G.L. c. 151A, § 30(c) and 430 CMR 9.00 *et seq.*

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 training program pursuant to G.L. c. 151A, § 30(c), if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 27, 2018



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

Member Charlene A. Stawicki, Esq. 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)**

¹ When the Board reviewed the claimant's appeal in June 2018, we confirmed that the claimant's program was listed as approved in JobQuest. Our remand order asked that the review examiner print out from JobQuest and enter into evidence the Course Details page for the program, which, at the time of our remand order, could be found at the URL <http://jobquest.detma.org/JobQuest/TrainingDetails.aspx?ti=1106572>. *See* Remand Exhibit # 4, Question # 2. However, when the review examiner tried to retrieve the document from JobQuest, she received an error message, which she properly printed out and entered into evidence as Remand Exhibit # 6.

² We take administrative notice that, as of September, 2018, the claimant's chosen program is listed as approved for Section 30 benefits in the Massachusetts One-Stop Employment System (MOSES).

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