

Claimant was not eligible for Section 30 benefits because she missed the 20-week application deadline and enrolled in a part-time training program. She was notified of the Section 30 program and its deadline through the DUA's Guide to Benefits and at a DUA orientation session.

**Board of Review
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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) denying an extension of the claimant's unemployment benefits while she participated in a training program.

The claimant separated from employment, filed an unemployment claim, effective November 12, 2017, and was approved for benefits. She subsequently filed an application with the DUA for an extension of benefits while attending a training program pursuant to G.L. c. 151A, § 30(c) (Section 30 benefits), which the agency denied on July 17, 2018. The claimant appealed the 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 the extension of benefits in a decision rendered on August 31, 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.

However, on January 24, 2019, we granted DUA's request to revoke the Board's final decision, because the review examiner had failed to consider and weigh evidence that is material to one of the issues on appeal. We remanded the case to the review examiner to make subsidiary findings of fact from the record to clarify when the claimant participated in a Career Center orientation and whether she was informed, at that time, about the 20-week training program application deadline. Thereafter, the review examiner issued her consolidated findings of fact. Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, the claimant's appeal, and the consolidated findings of fact.

The issue before the Board is whether the review examiner's original decision, which concluded that the claimant is ineligible for Section 30 benefits because her training program was not full-time, and because she submitted her Section 30 application beyond the application deadline, 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 and credibility assessment are set forth below in their entirety:

1. The claimant filed her claim for unemployment benefits on November 21, 2017. The effective date of the claim is November 12, 2017.
2. Prior to filing her claim for unemployment benefits, the claimant had worked as a full-time Executive Assistant for a pharmaceutical company until June 2017 and as a part-time Unit Coordinator for a hospital until November 2017. (There was no indication that she would be recalled to either position.)
3. The claimant requested to receive her correspondence from the Department electronically.
4. The claimant provided her accurate e-mail and mailing address when filing her claim for unemployment benefits.
5. The claimant received the Guide to Benefits and Employment Services for Claimants. Within the Guide there is information on the Section 30 Training Opportunities Program and the need to file an application in a timely fashion to be eligible. (The claimant does not recall reading anything within the Guide pertaining to Section 30 Training Opportunities Program benefits.)
6. The claimant attended an orientation session on December 18, 2017. The claimant was provided with information on the Section 30 Training Opportunities Program during that orientation, along with her potential eligibility for the program and the need to submit her application within the first 20 weeks of receiving unemployment benefits. The claimant signed the acknowledgement of receiving that information.
7. There was a note, as part of the claimant's information, within the Massachusetts One Stop Employment System created on December 18, 2017 indicating "Acknowledges Section 30 Requirements". (Attained) Claimant has signed off and acknowledges that they have been informed about the Training Opportunities Program (TOP/Section 30) and understands they must submit a complete TOP/Section 30 application within the first 20 weeks of receiving UI Benefits. Actual Date 12/18/2017."
8. The twentieth compensable week of the claim for unemployment benefits is the week ending April 28, 2018.
9. The claimant erroneously believed that in order to be eligible for the Section 30 Training Opportunities Program she would have to be enrolled in a course for computers. The claimant did not understand that she could be eligible for Section 30 Training Opportunities Program benefits when enrolled in a course of study not related to computer training.

10. In late June 2018/early July 2018, the representative at Roxbury Community College discussed with the claimant potential eligibility for Section 30 Training Opportunities Program benefits.
11. The claimant completed and signed the Training Opportunities Program application with a date of July 9, 2018. The claimant's completed Section 30 Training Opportunities Program application was submitted to the Department on July 11, 2018.
12. The claimant submitted the application to attend Roxbury Community College Health Care Program. The claimant had originally begun attendance at Roxbury Community College in that program in September 2013. (The claimant's enrollment at that time was on a limited basis.)
13. From September 2013 until May 2018, the claimant had earned 43 credits at Roxbury Community College going towards her degree.
14. The claimant needs a total of 62 Credits to complete the program. Upon completion of the program, the claimant would obtain an Associate's Degree in Health Services.
15. The Associates Degree would allow the claimant to obtain a position working as an Office Manager, an Executive Assistant, or a Research Assistant.
16. The semester from May 29, 2018 until August 10, 2018 the claimant was attending courses at Roxbury Community College towards her degree. During that semester, the claimant was taking one course, earning a total of 4 credits.
17. The claimant will be attending courses at Roxbury Community College during the semester from September 15, 2018 through to December 21, 2018. The claimant plans to take three courses, earning a total of 11 credits. The claimant will be in attendance at school four days per week.
18. The claimant will be attending courses at Roxbury Community College during the semester from January 17, 2019 through to May 22, 2019. The claimant plans to take two courses, earning a total of 8 credits.
19. The claimant is scheduled to complete the program, earning her Associates Degree in Health Care, on May 23, 2019.
20. On July 17, 2018 the claimant was issued a Notice of Disqualification under Section 30 of the Law, indicating that "You are in attendance at a full-time program and your application for school or training approval was denied pursuant to the above cited section of the Law for the reason indicated below. You are not eligible to receive up to 26 weeks times your weekly benefit rate

in additional benefits while attending the full-time program.” “Training approval was denied because Denied Part-Time School. Please read below for Secondary Disqualification”. The Secondary Disqualification indicated “You failed to file your Training Opportunities Program (section 30) Application by your Twentieth Compensable week, Your Training Opportunities Program (section 30) Application inadequate information (school failed to indicate your Major).” The claimant filed an appeal to that determination.

Credibility Assessment:

The claimant’s testimony that she was not provided with information on Section 30 Training Opportunities Benefits during her orientation session was not credible, as the DUA records indicate that the claimant [had] been informed of the program and further was specifically informed of the 20-week deadline date of file her application.

Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner and determine: (1) whether the consolidated findings are supported by substantial and credible evidence; and (2) whether the review examiner’s original 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. We further believe that the review examiner’s credibility assessment is reasonable in relation to the evidence presented. As discussed more fully below, we agree with the review examiner’s legal conclusion that the claimant is not eligible for Section 30 benefits.

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

As stated in the above provision, an individual will only be eligible for Section 30 extended unemployment benefits if her training program is approved by DUA and she submits her application for these benefits within the 20th compensable week of her claim. In her decision, the review examiner disqualified the claimant for both reasons.

The criteria for approval of a training program under G.L. c. 151A, § 30(c), are set forth under the DUA regulations. Specifically, 430 CMR 9.05(2), states, in pertinent part, that the program must:

(b) Be a full-time course, providing a minimum of at least 20 hours of supervised classroom training per week; provided, however, that:

1. if the program is offered by a community college, college, or university, this requirement shall be met if the program provides a minimum of 12 credits each semester or the equivalent

Although the claimant had been working toward her Associate's Degree in Health Services for some time, her Section 30 application sought approval for May 29, 2018, through May 17, 2019. *See Consolidated Findings ## 12–14; Exhibit 4.*¹ However, during this period, she planned to enroll part-time. Specifically, she would earn four credits from May 29, 2018 through August 10, 2018. Consolidated Finding # 16. In the fall semester, from September 15 through December 21, 2018, the claimant would be enrolled in 11 credits. Consolidated Finding # 17.² And in her final semester, January 17 through May 22, 2019, the claimant planned to take eight credits. Consolidated Finding # 18. In order to meet the full-time training requirement, the claimant needed to show that she was enrolled in her community college training program for a minimum of 12 credit hours each semester, or 20 hours of supervised classroom training per week. Because her requested training program does not meet this full-time threshold, we agree that it is not approvable for Section 30 benefits.

On appeal, the claimant urged the Board to approve the program because she is almost finished with her degree and because she planned to spend time getting tutoring on top of her credit hours. Unfortunately, being nearly finished with a training program is not a permissible basis under the regulations for waiving the full-time training requirement,³ and tutoring assistance does not qualify as supervised classroom training.

As for meeting the statutory application deadline, the consolidated findings show that the claimant's 20th compensable week deadline was April 28, 2018. Consolidated Finding # 8. Her Section 30 application was filed on July 11, 2018, over two months late. The DUA regulations at 430 CMR 9.06(3) allow the Section 30 application deadline to be extended under certain circumstances. One of those circumstances is if the DUA failed to provide written notice of the

¹ Exhibit 4 is the completed Section 30 application submitted to the DUA on July 11, 2018. While not explicitly incorporated into the review examiner's findings, Exhibit 4 is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is 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).

² Although the claimant testified that she would be enrolled in 11 credits during the fall semester, we note that other evidence, including her Section 30 application (Exhibit 4) and materials submitted with her appeal to the Board show that she is only enrolled in 10 credits.

³ *See Board of Review Decision 0018 3639 73* (Nov. 30, 2016), where the Board approved Section 30 benefits for the first five of six academic terms when the claimant was enrolled full-time. During the final term when he anticipated a part-time schedule because that is all that remained to fulfill his graduation requirements, the Board held he would not be eligible for Section 30 benefits.

application deadline. *See* 430 CMR 9.06(3)(c) and 9.07(3).⁴ The review examiner's original decision disqualified the claimant for missing her 20-week application deadline, but the findings were confusing about when and how the claimant learned of the deadline.⁵ At the DUA's request, and because these findings are material to whether she had been timely notified of the deadline, we remanded the case to clear up the confusion and be sure that the review examiner had reviewed all of the evidence in the record.

After remand, the consolidated findings now show that the DUA notified the claimant of the 20-week application deadline both in the Guide to Benefits when she first filed her claim in November, 2017, and during her orientation session on December 18, 2017. *See* Consolidated Findings ## 5–7. This notice was well in advance of the claimant's April 28, 2018, Section 30 application deadline. The claimant has not presented any other reason for missing the deadline which, under 430 CMR 9.06(3), constitutes a condition for granting a Section 30 application deadline extension.

We, therefore, conclude as a matter of law that the claimant is ineligible for an extension of benefits under G.L. c. 151A, § 30(c), because she is not enrolled in a full-time training program and because she failed to meet the statutory application deadline.

⁴ The current versions of 430 CMR 9.06 and 9.07, promulgated on October 2, 2009, still refer to a 15-week application period. On August 10, 2016, the Legislature amended the statute to expand the deadline to 20 weeks.

⁵ Findings of Fact ## 1 and 5 provided that the Guide to Benefits, which included information about the Section 30 program and application deadline, was given to the claimant upon filing her claim in November, 2017. Finding of Fact # 6 referred to a September 2017 orientation session (preceding the date she filed her unemployment claim) in which the claimant was not informed of the Section 30 program. Finding of Fact # 9 stated that the claimant first learned of the Section 30 program from a community college representative in June or July, 2018. There was also no suggestion that the review examiner had considered Exhibit 5, which included Career Center notes about discussing the 20-week application deadline with the claimant in December, 2017.

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.

BOSTON, MASSACHUSETTS
DATE OF DECISION – March 20, 2019



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, 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)**

The last day to appeal this decision to a Massachusetts District Court is thirty days from the mail date on the first page of this decision. If that thirtieth day falls on a Saturday, Sunday, or legal holiday, the last day to appeal this decision is the business day next following the thirtieth day.

To locate the nearest Massachusetts District Court, see:
www.mass.gov/courts/court-info/courthouses

Please be advised that fees for services rendered by an attorney or agent to a claimant in connection with an appeal to the Board of Review are not payable unless submitted to the Board of Review for approval, under G.L. c. 151A, § 37.

AB/rh