

Claimant, who enrolled in a CDL driving school, was eligible for training benefits, where he established that the school had secured DUA approval for training benefits, and because the State of New Hampshire was paying the tuition with WIOA funds.

**Board of Review
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Issue ID: 0026 3026 22

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 reverse.

The claimant became separated from employment and filed a claim for unemployment benefits on March 19, 2018, which was ultimately approved by the DUA. On July 10, 2018, the claimant filed an application with the DUA for an extension of benefits to attend a training program, which the agency denied on July 28, 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 September 14, 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 accepted the claimant's appeal for review. 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 his chosen program was not itself 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 findings of fact are set forth below in their entirety:

1. The claimant filed a claim for unemployment benefits effective 03/18/18.

2. On 07/10/18, the claimant submitted a Training Opportunities Program Application.
3. On 07/28/18, the claimant was mailed a Determination of Eligibility for Training Opportunity Benefits Notice of Disqualification.
4. The claimant's 07/28/18 Notice informed him that his chosen course, CDL-A Moses Training Pro # 1107636, beginning on 09/06/18 and completing on 10/26/18, has not been approved for Section 30 eligibly [sic].
5. It was determined that the claimant is not entitled to Section 30 benefits while attending the course because the training program has expired in Training Pro (Moses) and needs to be renewed.
6. The claimant began this training on 09/06/18 and received educational grants from the state of New Hampshire. The claimant expects to complete the training on 10/26/18.

Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the findings are supported by substantial and credible evidence; and (2) whether the review examiner's ultimate conclusion is free from error of law.

After such review, the Board adopts the review examiner's consolidated findings of fact except as follows: while the claimant's chosen program may not have been approved as of the date of the hearing on September 12, 2018, we take administrative notice that the program is listed as approved in the Massachusetts One-Stop Employment System (MOSES) and the DUA's JobQuest online database.¹ Thus, while Finding # 4 is correct insofar as it states the July 28 Notice indicated the program was not approved for Section 30 benefits, and Finding # 5 correctly states that training benefits were denied because the program's eligibility had expired, the program has, in fact, been approved for Section 30 benefits. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence.

Consequently, as discussed more fully below, we reject the review examiner's legal conclusion, and conclude that the claimant is eligible for training benefits.

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

¹ See <http://jobquest.detma.org/JobQuest/TrainingDetails.aspx?ti=1117636>. We take further administrative notice that, as of October, 2018, the claimant's chosen program is listed as approved in MOSES.

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 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 he applied for these benefits on July 10, 2018, his 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 hearing on September 12, 2018, he also 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.

The claimant's appeal to the Board included a printout from the DUA's JobQuest database showing that that the course in which he chose to enroll — the Heavy and Tractor-Trailer Truck Driver CDL-A program at the Commercial Driving School (CDS) in Concord, New Hampshire (Course ID# 1117636) — *was* approved for Section 30 benefits from September 10 through October 31, 2018.² As noted above, we confirmed that this program is listed in JobQuest and MOSES. The claimant's chosen program satisfies the requirement of 430 CMR 9.05(2)(b).

Moreover, the review examiner also found that the claimant received funding for his training through the State of New Hampshire. In fact, the claimant testified that New Hampshire awarded him a WIOA grant which was paid \$5,500.00 of the \$6,500.00 tuition for the program.³ Pursuant to 430 CMR 9.05(2)(e):

² We note that, in completing its portion of the claimant's application for training benefits, CDS provided a Training PRO/MOSES Course ID # of 1107636. *See* Exhibit # 2. This apparent clerical error may have caused some confusion, where the program's actual, *approved* Course ID # is 1117636.

³ The claimant's tuition reimbursement through the New Hampshire WIOA program, while not explicitly incorporated into the review examiner's findings, 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).

Any training program approved under WIA [now WIOA] shall be deemed an approved training program under 430 CMR 9.00.

Thus, even if the claimant's program were not specifically approved in MOSES and JobQuest — and it has been — he would be eligible for training benefits since the program is deemed eligible because the claimant was granted WIOA funds.

The claimant began his program on September 6, 2018, and plans to complete it by October 26, 2019, so he will complete the program within the time parameters set forth in 430 CMR 9.05(2)(c). 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 his weekly benefit rate while attending this training program, pursuant to G.L. c. 151A, § 30(c), if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 30, 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)

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