

**Claimant, who enrolled in a teaching certificate program, did not qualify for training benefits, where his training provider did not get the program approved by DUA.**

**Board of Review  
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**Issue ID: 0026 7946 80**

## **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 February 1, 2018, which was ultimately approved by the DUA. On August 15, 2018, the claimant mailed an application to the DUA for an extension of benefits to attend a training program (training benefits), which the agency subsequently denied on October 3, 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 November 28, 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, why the claimant chose this training program, 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 filed for unemployment benefits with an effective date of January 28, 2018.
2. The claimant's first compensated week was the week ending March 17, 2018, the payment of which was issued on April 25, 2018 along with other retroactive weeks for a total amount of \$3,762.00.
3. The claimant exhausted his benefits the week ending July 21, 2018 (the claimant's nineteenth [sic] week).
4. On August 15, 2018 (as determined by the postmark), the claimant submitted his TOP application. August 15, 2018 was the sixteenth [sic] week after the claimant's first payment.
5. The claimant earned a Bachelor of Arts in Communication from Worcester State University in 2002. The claimant has no other degrees, certificate, or professional licenses.
6. The claimant's most recent job was as a Senior Unit Manager in a control/sub-accounting department of an investment services company from June of 2008 to June of 2017.
7. The claimant began a program of study at Worcester State University on September 6, 2017. The program of study is a post-baccalaureate (undergraduate) certificate in early childhood education with licensure.
8. The claimant's previous employer offered continuation pay for up to nine months or until the claimant becomes reemployed, whichever came first. The claimant decided to go to school because once he found new employment within nine months of his separation date, his former employer's benefits program would cease. The claimant also believed that a career change was necessary due to unstable job security in his field.
9. The training program is not related to his most recent employment. The claimant believes that his current program of study is necessary because of the unstable nature of his most recent job in that industry and a career change is best in his situation.
10. The claimant submitted his TOP application in August of 2018 because he was not aware of the program until around the time of his benefits exhausting. The claimant was not required to participate in RESEA prior to his application (or to date).

11. The claimant will earn an early childhood initial licensure post-baccalaureate certificate upon completion of the program, which requires fifty-four credits.
12. The certificate program usually takes three and one-half years on a full-time basis.
13. The certificate program requires one-hundred fifty practicum hours for ED 313 (Practicum in Early Childhood Education-Preschool and Kindergarten) at three credits and three-hundred practicum hours for ED 430 (Practicum in Early Childhood Education-Grades 1 and 2) at nine credits, which is a state requirement not reflected in the program booklet (not updated). The program also has an additional seventy-five hours embedded in twenty-four to twenty-seven credits hours.
14. Worcester State University allowed the claimant twelve transfer credits.
15. In the fall semester of 2017, which ran from September 6, 2017 to December 31, 2017, the claimant took nine credits.
16. In the spring semester of 2018, which ran from January 16, 2018 to May 23, 2018, the claimant took twelve credits.
17. In the fall semester of 2018, which ran from September 5, 2018 to December 31, 2018, the claimant took twelve credits.
18. In the spring semester of 2019, which runs (for the claimant due to the practicum) from January 2, 2019 to approximately May 17, 2019, the claimant is taking nine credits.
19. To date, the claimant has completed forty-five credits.
20. Currently (spring semester of 2019), the claimant is taking nine credits.
21. The claimant will require no additional courses or credits and has passed all required MTEL examination as of December of 2018. While employed as a licensed teacher, the claimant will need to complete a master's degree within five years.
22. The claimant is scheduled to complete the certificate program in May of 2019.
23. It is unknown if Worcester State University has sought to become an approved training provider via Training Pro.
24. Worcester State University has not received approval to have the claimant's chosen course added to the Section 30/TOPS-approved program list. It is unknown why this has not occurred.

25. The claimant has not secured tuition reimbursement to attend this program, through a Massachusetts career center and/or 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 original conclusion is free from error of law. After such review, the Board adopts the review examiner's consolidated findings of fact, except for the parts of Findings ## 3 and 4 setting forth the compensable week at issue, which the review examiner calculated incorrectly. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, while we believe that the review examiner's consolidated findings of fact support the conclusion that the claimant timely filed his application, we conclude that he remains ineligible 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. 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 9.01–9.09. The regulations specifying circumstances when the 20-week application 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 20<sup>th</sup> 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 April 25, 2018, his first compensable week was the week ending April 28, 2018. From there, the week ending September 8, 2018, would have been his 20<sup>th</sup> compensable week. Where the claimant mailed his training application to the DUA on August 15, 2018, he filed well before the end of his 20<sup>th</sup> compensable week, notwithstanding that he had already exhausted his regular unemployment benefits. Thus, we conclude that the claimant's application was timely filed, as a matter of law.

In order to ensure training providers adequately prepare claimants to rejoin the workforce, and will communicate with the DUA if there is a change in the claimant's enrollment status, their training programs must demonstrate measurable standards, and training providers must apply with the DUA 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 Worcester State University has not applied to be a DUA-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 # 24 and Remand Exhibit # 10. Thus, we conclude that the claimant's training program does not meet the requirements of 430 CMR 9.05, as a matter of law.<sup>1</sup>

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<sup>1</sup> Because the claimant's chosen program is not an approved program within the meaning of the pertinent regulations, we need not decide whether the claimant needs the program at issue to secure new employment. We note, however, that on the record before us it is not clear this is the case. The review examiner found that the claimant has a bachelor's degree and substantial experience in the field of investment services. He worked for his most recent employer for 17 years in a series of jobs with progressively more responsibilities. *See* Remand Exhibit # 12. The review examiner also found that the claimant's training program is not related to his most recent employment, the field in which he worked for 17 years. Based on these findings, we are not convinced that the claimant has established a need for the training at issue to obtain new employment.

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 - April 29, 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](http://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