

Claimant's mandatory weekly computer lab work was timed, reviewed, graded, and necessary to become employable in the occupation for which he was training. Together with his weekly classroom lecture hours, the claimant's community college training program met or exceeded the minimum 20 hours of supervised classroom training per week to be considered full-time. He is approved for Section 30 benefits.

**Board of Review
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Issue ID: 0026 9070 07

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 separated from employment, filed an unemployment claim, effective May 13, 2018, and was approved for benefits. He subsequently filed an application with the DUA for an extension of benefits while attending a training program, which the agency denied on September 15, 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 December 15, 2018. We accept the claimant's application for review.

The extended benefits were denied after the review examiner determined that the claimant was not enrolled in a full-time training program, and, thus, he was not eligible under G.L. c. 151A, § 30(c) (Section 30 or training benefits). 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, and the claimant's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant's combination of class lectures and mandatory laboratory work did not constitute full-time training within the meaning of G.L. c. 151A, § 30(c), and the DUA regulations at 430 CMR 9.05(2)(b), 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 was permanently separated from employment when he filed an unemployment claim having an effective date May 13, 2018. He began receiving benefits beginning the week ending June 2, 2018.
2. The claimant's most recent employment was as an IT Support Specialist/Systems Administrator at a healthcare cost containment company.
3. The claimant went to a career center orientation on June 27, 2018. The claimant was given written information regarding the Department of Unemployment Assistance (DUA's) Training Opportunities Program (TOP). That written information informed the claimant he must complete a TOP application within the first 20 weeks of receiving benefits.
4. The claimant submitted a Training Opportunities Program Application on August 31, 2017, during the 14th compensable week of the claim. The training program was listed as part-time through Massasoit Community College. The name of the program was Networking Specialist Certificate Program. The Certificate is issued through [Company A]. The program start date was September 5, 2018 with an end date of May 20, 2019.
5. In order to complete the program students are required to complete 16 credits.
6. The claimant was accepted into the program for the Fall 2018 semester scheduled from September 5, 2018 through December 22, 2018.
7. The claimant would be taking 10 credits during the Fall 2018 semester and 6 credits during the Spring 2019 semester.
8. On September 5, 2018, the claimant began taking classes. The claimant was enrolled in three classes totaling 10 credits. Each class consisted of five to six hours of lectures and a minimum of four hours of laboratory work weekly. The claimant had classes on Mondays and Wednesdays from 8 a.m. until 2 p.m. and on Thursdays from 5 p.m. until 10 p.m.
9. Laboratory time was not scheduled but could be completed at any time outside of class.
10. The claimant could complete the lab work for one of his classes at home. However, the lab work for the other two classes required specialized equipment owned by the school; this lab work was completed at the college.
11. The required laboratory work consisted of building and wiring hardware equipment and programming the hardware. All lab work was reviewed and approved by an instructor.
12. On September 15, 2018, the claimant was issued a Notice of Disqualification from the DUA informing him his application for school or training approval

was denied and he was not eligible to receive up to 26 weeks in additional benefits because the program is not full-time.

13. On September 25, the claimant appealed his September 15 Notice of Disqualification.
14. The claimant will enroll in 6 credits in the Spring 2019 semester from January 23, 2019 until May 20, 2019. The claimant will have a similar classroom and laboratory schedule with each class consisting of six hours of lecture and four to six hours of laboratory work.
15. The claimant must pass the first semester to qualify for the first level of certificate through [Company A]. Upon completion of the program the claimant will be eligible for testing taken through [Company A] to become a Certified [Company A] Network Engineer.

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. Upon such review, the Board adopts the review examiner's findings of fact and deems them to be supported by substantial and credible evidence. However, as discussed more fully below, we reject 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; . . .

At issue is whether the claimant's training program meets the criteria set forth under the DUA regulations for a training program's approval. 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*; and provided further that:
 2. if the program is offered as part practicum or internship and part classroom hours, the program will be approved only for the time needed to

complete state or federal certification or licensing requirements, or the time deemed necessary by the Director to allow the claimant to become employable in the occupation for which the training has been provided

(Emphasis added.)

The review examiner concluded that the claimant was ineligible for Section 30 benefits because the claimant's community college training program is fewer than 12 credits per semester. The Massachusetts Appeals Court noted that the regulation's 12-credit hour provision was intended to allow the agency to approve a college or community college course of study that, "although valuable and rigorous, would be unlikely to meet the generally applicable twenty-hour requirement. The credit-hour proviso thus provides for an alternative, not an exclusive, basis for approval of courses provided by colleges, universities, and community colleges." Figueroa v. Dir. of Department of Labor and Workforce Development, 54 Mass. App. Ct. 64, 68 n. 7, 72 (2002) (remanded to consider whether the claimant's weekly 29–39 computer lab hours in combination with the nine classroom credit hours constituted a minimum of 20 hours of supervised training per week). Thus, 430 CMR 9.05(2)(b) is to be viewed in its entirety, and we may consider whether this community college credit course of study meets the minimum 20 hours per week criterion.

In Figueroa, the Appeals Court left it to the agency to consider whether the claimant's labs contained enough supervision to qualify as "supervised classroom training," or whether they were simply a place for performing homework much like spending time at the public library performing research for an English paper. Id. at 69. It suggested that it would be reasonable to conclude the former, inasmuch as the claimant was required to be on campus in a lab staffed with teachers focusing on course-related work each and every week for 29–39 hours, a regimen required of few 12-credit college courses. Id. at 72.

The determination as to whether or not the claimant's combined lab and classroom hours constitute 20 hours of supervised classroom training is a question of law. *See Id.* at 69.¹ The review examiner decided the claimant's lab work was more in the nature of homework, like completing a research paper at the library. We disagree. Each of the claimant's courses required four hours per week of laboratory work. Finding of Fact # 8 and Exhibit 9.² We are not aware of any such minimum hourly or weekly requirement imposed upon students who are assigned a research paper. Moreover, the claimant testified that these lab assignments are timed by [Company A], reviewed with the professor, and then graded each week. He further explained that they are a critical component of the training, describing the lab exercises are "what you will

¹ *Citing, inter alia*, Dir. of Division of Employment Security v. Fingerman, 378 Mass. 461, 463–464 (1979), wherein the Court stated, "[a]pplication of law to fact has long been a matter entrusted to the informed judgment of the board of review."

² Exhibit 9 is a letter from the claimant's Associate Professor at Massasoit Community College listing the claimant's courses, the number of credits, and the number of laboratory hours for each course. While not explicitly incorporated into the review examiner's findings, it 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).

be doing in the real world.”³ We think these factors show that the required lab component of the claimant’s course of study is supervised on a regular, on-going basis throughout the semester and, much like the hybrid, part-practicum and part-classroom type program discussed in 430 CMR 9.05 (2)(b)2, the labs are also necessary to allow the claimant to become employable in the occupation for which the training is being provided. In short, we conclude that the labs may be counted toward the 20 hours per week of supervised training.

We next consider whether he meets the 20-hour threshold in each semester. During the fall 2018 term, the claimant is taking three courses. Each includes five-six hours of classroom lecture and four hours of lab work per week. *See* Finding of Fact # 8. This adds up to 27-30 hours per week, satisfying the minimum 20-hour per week requirement under 430 CMR 9.05(2)(b).

In the spring 2019 semester, the review examiner found that the claimant would be enrolled in six credits with a similar classroom and laboratory schedule of six hours of lecture and at least four hours of lab work per class per week. Finding of Fact # 14. Based upon the credit hours which the community college allocated to each of the claimant’s three fall semester courses, we infer that the six credit spring assignment is actually two courses. *See* Exhibit 9. Thus, the claimant’s spring semester training adds up to 12 hours of lecture and eight hours of laboratory work per week, again meeting the minimum 20-hour training threshold.

We, therefore, conclude as a matter of law that the claimant is participating in a full-time training program within the meaning of 430 CMR 9.05(2)(b).

³ This portion of the claimant’s testimony is also part of the unchallenged evidence in the record.

The review examiner's decision is reversed. The claimant is entitled to an extension of up to 26 times his weekly benefit rate under G.L. c. 151A, § 30(c), while he attends his training program if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION – January 22, 2019



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.

AB/rh