

**Claimant seeking a master's degree program timely applied for training benefits, but by predicated his full-time participation on receipt of training benefits, claimant failed to establish that he was attending on a full-time basis and that he could finish the program within two years. Because the claimant failed to establish these criteria, the Board did not need to consider whether the claimant's chosen program was actually "necessary to obtain employment."**

**Board of Review  
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**Issue ID: 0027 4353 82**

## **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 May 13, 2018, which was ultimately approved by the DUA. On October 13, 2018, the claimant mailed an application to the DUA for an extension of benefits to attend a training program, which the agency subsequently denied on November 9, 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 December 29, 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, he was not attending on a full-time basis, and he did not establish that he would complete his program within two years, and, thus, he did not meet the requirements for training benefits pursuant to G.L. c. 151A, § 30(c), and 430 CMR 9.00–9.09. 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 case 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 (1) he filed after the 20-week deadline, without meeting any of the tolling exceptions set forth in the applicable regulations; (2) he was not attending his program on a full-time basis; and (3) he did not establish that he would

complete his program within two years, 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 for unemployment benefits with an effective date of May 13, 2018.
2. The claimant's first compensated week was the week ending May 26, 2018, paid on May 27, 2018 [sic].
3. On July 24, 2018, the claimant received information regarding TOP benefits.
4. In August of 2018, the claimant indicated to his counseling [sic] that his TOP application was in the works.
5. The claimant's twentieth compensable week ended October 6, 2018 [sic].
6. On October 13, 2018, the claimant sent his TOP application to the DUA.
7. The claimant applied for TOP benefits with a course start date of September 5, 2018 and an anticipated end date of May 20, 2020.
8. The claimant began a graduate course of study for a master's in non-profit management.
9. For the fall semester of 2018, the claimant took six graduate credits.
10. For the spring semester of 2019 and thereafter, the claimant intends to take nine credits (or a full-time equivalent) conditioned upon the approval of his TOP application.
11. The claimant, who has found it difficult to find new employment given his age, experience, and education level, intends to gain employment in post-secondary education after completing the program.
12. The claimant is working part-time at eight hours per week for a variety of reasons including, but not limited to, maintaining contact within the industry, maintaining his skills, maintaining a possible back-up plan, making ends meet, etc.
13. The claimant found it difficult to work part-time and take six graduate credits concurrently.

14. The claimant expressed that benefits would allow him to not work while attending school.
15. On November 9, 2018, the DUA denied the [claimant's] application for the primary and secondary reasons that he has the necessary skills and experience to obtain full-time employment and the proposed program is not necessary to obtain suitable employment.

### 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 original conclusion is free from error of law. After such review, the Board adopts the review examiner's findings of fact except for Findings of Fact # 2 and # 5. We note that the DUA's electronic record-keeping database shows that the claimant was issued his first check for unemployment benefits on May 29, 2018. As explained more fully below, the claimant's first compensated week was thus the week ending June 2, 2018, not the week ending May 26, 2018. Consequently, the claimant's 20<sup>th</sup> compensable week was the week ending October 13, 2018, not the week ending October 6, 2018.

In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, while we reject the review examiner's legal conclusion that the claimant did not timely file his request for training benefits, we believe that the findings of fact support the conclusion that the claimant is not attending his program on a full-time basis and he did not establish that he will be able to complete the program within two years.

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.

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. The regulations specifying circumstances when the 20-week deadline may be tolled are set forth in 430 CMR 9.06(3).

After the hearing, the review examiner primarily denied the claimant's application for training benefits because he 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 the review examiner failed to follow 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 a 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 May 29, 2018, his first compensable week was actually the week ending June 2, 2018. Consequently, his 20<sup>th</sup> compensable week was the week ending October 13, 2018. Where the claimant mailed his training application to the DUA with a postmark of October 13, 2018, we conclude, as a matter of law, that his application was timely filed.

As noted above, however, a claimant must satisfy all of the statutory and regulatory requirements in order to receive training benefits. The first issue remaining before us concerns the requirement that the claimant be enrolled in his educational program on a full-time basis. This requirement is set forth in 430 CMR 9.05(2)(b)(1), which indicates, in pertinent part:

Training programs must . . . [b]e 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 . . . .

Second, a claimant must establish that he will be able to complete his program within two years (or three years, if remedial courses are necessary), as set forth in 430 CMR 9.05(2)(c):

Training programs must . . . [b]e completed within two years, or within three years if the program combines Basic Skills with vocational or industrial training. . . .

After the hearing, the review examiner found that the claimant only enrolled in six credits during the fall 2018 term; the claimant "found it difficult to work part-time and take six graduate credits

concurrently”; and that the claimant’s decision to enroll on a “full-time” basis<sup>1</sup> for the spring 2019 term was contingent on his approval for training benefits. The claimant’s appeal to the Board also conditioned his “full-time” enrollment on receipt of training benefits. While this approach may seem reasonable to the claimant, it does not constitute “full-time” enrollment necessary to satisfy 430 CMR 09.05(2)(b)(1).

Moreover, the claimant’s application for training benefits shows that his program requires 36 credits to complete his degree. *See* Exhibit # 1. Where the claimant was taking only six credits during the fall 2018 term, and was predicated his enrollment in the spring 2019 term on his receipt of training benefits, we agree with the review examiner’s conclusion that the claimant has not established that he will be able to complete his program within two years, as required by 430 CMR 9.05(2)(c).

We, therefore, conclude as a matter of law that the claimant does not meet the requirements of G.L. c. 151A, § 30(c), and 430 CMR 9.00 *et seq.*, because he is not attending his program on a full-time basis; and he has not established that he will complete his program within two years.<sup>2</sup>

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<sup>1</sup> While 430 CMR 9.05(2)(b)(1) defines “full-time” enrollment in a community college, college, or university as a minimum of 12 credits per semester, we note that the claimant’s training provider contends that full-time status requires only nine credits. *See* Exhibit # 10. Because the claimant admittedly has not even enrolled in nine credits, we need not address whether nine graduate credits constitutes full-time enrollment.

<sup>2</sup> We further note an ambiguity in the review examiner’s analysis as to whether his chosen program — a master’s degree in non-profit management — is necessary to obtain suitable employment, the basis for his initial disqualification. The review examiner properly credited the claimant’s testimony that he has found it difficult to find new employment in view of his age, experience, and education level. Noting that training benefits were initially denied because the program was unnecessary to obtain a job, the review examiner vaguely opined, “This is arguable as the claimant convincingly laid out.” Thus, the review examiner did not explicitly conclude that the claimant’s program was necessary to obtain suitable employment.

The claimant’s testimony during the hearing suggested he eschewed two Section 30-approved certificate programs that would have helped him secure re-employment in his “usual occupation” because they were more costly — \$7,500.00 and \$10,000.00 — than the free tuition his chosen program offered him. *See* Exhibit # 19. We note that these two programs would have only taken six and eight weeks to complete, respectively, and could have helped the claimant return to the workforce more quickly than this master’s degree program, which will take longer than two years to complete. Moreover, where the claimant indicated he planned to use his master’s degree (in non-profit management) to secure a teaching position in post-secondary education, it is unknown how this training program and career path would lead to the salary of \$90,000.00 to \$100,000.00 he claimed he was seeking as a beginning post-secondary teacher. Because we conclude that the claimant has failed to establish that he satisfies the requirements that he attend the program on a full-time basis and that he will finish his program within two years, we decline to remand for additional evidence as to whether this program is actually “necessary to obtain 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 - March 20, 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