

**New evidence provided during the remand hearing shows that the claimant is enrolled in a DCS-approved high school equivalency training program and that he is expected to complete it within two years. Therefore, he is entitled to benefits under G.L. c. 151A, § 30(c).**

**Board of Review  
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**Issue ID: 0027 5912 96**

## **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 participates 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 August 22, 2018, which was approved by the DUA. On October 23, 2018, the claimant submitted an application to the DUA for an extension of benefits to attend a training program (training benefits), which the agency subsequently denied on November 6, 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 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's training program does not meet the criteria for approval, and thus, he is not eligible 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 remanded the case to the review examiner to obtain further evidence about the anticipated completion date of the claimant's training program and whether the program has been approved for participation in the Section 30 program. The claimant attended the remand hearing, and, thereafter, the review examiner issued her 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 original decision, which concluded that the claimant's training program does not qualify to be approved for Section 30 benefits, is supported by substantial and credible evidence and is free from error of law, where the consolidated findings after remand show that the claimant's anticipated training completion date is one year after enrollment, and the Department of Career Services has approved this training program for participation in the Section 30 program.

## Findings of Fact

The review examiner's consolidated findings of fact are set forth below in their entirety:

1. The claimant established an initial claim for benefits on 8/22/18.
2. At the time of filing his claim, the claimant was not in attendance at a training program for the High School Equivalency Test at the [City A] Adult Learning Center. The claimant began attending the program on 10/22/18; it is not known when the claimant will complete the training program. His completion depends on his development in each class.
3. The HISET Advisor expects the claimant will complete the program by October of 2019.
4. The HISET training program is usually completed by students on average within 52 weeks. The completion date depends on what level the student is reading and writing from the onset. The HISET program is written at a high school level. Other elements that can affect one's completion date is their attendance and homework completion.
5. The program does not give grades. The claimant has one of the most consistent attendance records of the students in the program. (Exhibit 7)
6. Information regarding the HISET program was presented by the program Advisor. (Exhibit 9, 10 and 11)
7. The claimant needs to pass 5 classes (Reading, Writing, Social Studies, Math and Science) to complete the program. The claimant has completed two classes as of the date of the remand hearing held on 3/21/19. He completed both Social Studies and Reading which he began on 10/22/18. He completed Social Studies on 11/26/18 and Reading as of 1/24/19. The claimant has three classes left to complete, Writing, Math and Science. He was enrolled in these three classes on 1/24/19. He is anticipated to complete these three classes by October of 2019.
8. The claimant's primary language is Spanish. Prior to beginning this program, the claimant's highest level of education was eighth grade. The claimant completed this level of education in Spanish in his native country, the Dominican Republic.
9. The claimant is expected to complete the HISET program by October of 2019. If the claimant completes the program by October of 2019, he will have completed it within a year.

10. On 10/23/18, the claimant submitted a Training Opportunities Program (“TOP”) application, seeking benefits under Section 30(c) while in attendance at the training. The application indicates that the claimant is attending the High School Equivalency HSET training at the [City A] Adult Learning Center. The school did not provide an end date for the claimant’s completion of the program. (Exhibit 1, page 3) The Department of Career Services approved the program from 11/26/18 to 6/30/19. (Exhibit 5)
11. On 11/6/18, the DUA issued the claimant a Notice of Disqualification, finding him ineligible for benefits under Section 30(c) of the law because the school was unable to provide an exact end date for the claimant to complete the program. In addition, the program was not an approved program at the time the claimant enrolled.
12. On 11/14/18, the claimant appealed the Notice of Disqualification.

### 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. However, based upon these consolidated findings, we reject the review examiner’s legal conclusion that the claimant is ineligible for training benefits, as outlined below.

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; . . .

The DUA regulations at 430 CMR 9.01–9.09 establish the standards for approving training programs themselves and the eligibility criteria for claimants seeking to participate in such programs.

In this case, the review examiner denied training benefits to the claimant because his application did not state when he would complete the training program. This is important because 430 CMR 9.05(2)(c) provides that training programs must be completed within two years. After remand, the consolidated findings show that the claimant will meet this requirement, because he should complete his program in one year. *See Consolidated Findings ## 3, 7, and 9.*

A second basis for the review examiner denying training benefits was that this high school equivalency program was not an approved training program at the time the claimant enrolled.<sup>1</sup> Since the Department of Career Services has since approved this training program to participate in the Section 30 program, we are satisfied that the school meets the additional criteria under 430 CMR 9.05 for approving the training program itself. *See Consolidated Finding # 10.*

We, therefore, conclude as a matter of law that the review examiner's original decision to deny benefits under G.L. c. 151A, § 30(c) is not supported by substantial evidence in light of the updated record, which shows that the training program has been approved for participation in the Section 30 program and that the claimant will complete his individual training program within two years.

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 - April 24, 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](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.

AB/rh

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<sup>1</sup> See Finding of Fact # 5 in the original hearing decision, entered into the record as Remand Exhibit 1.