

Claimant could not begin her human resources management certificate program because the school told her at the last minute that it would not approve her for financial aid due to a low, 33-year-old GPA. Instead, she asked for Section 30 benefits to attend a different Section-30 approved certificate program the following semester at another school. Held this was not a second training program within the same benefit year and her first TOP application was sufficient to meet the statutory application deadline.

**Board of Review
19 Staniford St., 4th Floor
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member
Michael J. Albano
Member**

Issue ID: 0028 2757 02

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 she participated in a training program. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant separated from employment and filed a claim for unemployment benefits, effective May 27, 2018. She was determined eligible for regular unemployment benefits. Subsequently, the claimant filed an application with the DUA for an extension of benefits while attending a training program pursuant to G.L. c. 151A, § 30(c) (Section 30 benefits), which the agency approved on October 12, 2018. However, the claimant submitted a second Section 30 application to attend a different training program, and this second application was denied in a determination issued on December 25, 2018. The claimant appealed the latter 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 January 31, 2019. We accepted the claimant's application for review.

Section 30 benefits were denied on the ground that this was the claimant's second training program within her benefit year, and, thus, this training program could not be approved under G.L. c. 151A, § 30(c). 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 denying Section 30 benefits to attend a new training program is supported by substantial and credible evidence and is free from error of law, where the claimant never started her first approved Section 30 training program, because at the last minute, the school denied financial aid based upon her grade point average (GPA) from 33 years before.

Findings of Fact

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

1. The claimant separated from her employer on May 30, 2018.
2. The claimant filed her claim for benefits on May 30, 2018, with an effective begin date of May 27, 2018, and effective end date of May 25, 2019.
3. The claimant's benefit year is May 27, 2018, through May 25, 2019.
4. The claimant's waiting week was the week beginning May 27, 2018, through June 2, 2018.
5. The claimant's first 20 compensable weeks spanned the weeks June 3, 2018, through October 20, 2018.
6. The claimant's 20th compensable week was the week beginning October 14, 2018, through October 20, 2018.
7. On August 30, 2018, the claimant submitted a Training Opportunities Program (Section 30) Application to the Department of Unemployment Assistance (DUA) for a Human Resources Management Certificate at a community college (CCA). (Exhibit 1)
8. The course dates were September 4, 2018 through May 23, 2019.
9. The claimant did not attend the Human Resources Management Certificate program beginning on September 4, 2018 because her GPA (grade point average) from her prior schooling was insufficient to qualify for financial aid. It was also too late to secure a [WIOA] grant.
10. On October 12, 2018, the DUA issued a Redetermination - Notice of Approval of the claimant's Training Opportunities Program (Section 30) Application for the Human Resources Management Certificate. (Exhibit 2)
11. The claimant found a Medical Billing and Coding Certificate program at another community college (CCB) which did not have a minimum GPA requirement. The claimant was able to secure financial aid and a [WIOA] grant to pay for the program.
12. On November 28, 2018, the claimant submitted a second Training Opportunities Program (Section 30) Application to the Department of Unemployment Assistance (DUA) for a Medical Billing and Coding Certificate program at CCB. (Exhibit 3)
13. The course dates were set at January 22, 2019 through December 13, 2019.

14. On December 25, 2018, the claimant was issued a Notice of Disqualification concerning her second Training Opportunities Program (Section 30) Application submitted on November 28, 2018, stating she was not eligible to receive up to 26 times her weekly benefit rate in additional benefits while attending the training program under Section 30 because she was only eligible for one approved academic/training program per unemployment benefit calendar year for which she had been approved.

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 ineligible 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; 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 review examiner's decision is based upon the DUA regulations that were promulgated to interpret the above statutory provision. Specifically, 430 CMR 9.06, provides, in pertinent part, as follows:

(4) Claimants may participate in only one training program in a benefit year. A Basic Skills training program coupled with vocational or industrial training approved under 430 CMR 9.04(2)(b), or a Certificate Program shall constitute one training program.

The record shows that the DUA approved the claimant's first training program, a human resources management certificate program at Holyoke Community College, but she could not

begin on September 4, 2018, as planned. *See* Findings of Fact ## 7 and 9; and Exhibit 1.¹ Instead, she applied for a different certificate program in medical billing and coding at an entirely different school. Because the review examiner considered this medical billing and coding program to be a second training program in one benefit year, he denied the claimant Section 30 benefits pursuant to 430 CMR 9.06(4).

First, we note that 430 CMR 9.06(4) states that claimants may *participate* in only one training program in a benefit year. In this case, the claimant never actually started the human resource management certificate training program. Finding of Fact # 9. Therefore, she has not participated in more than one training program in her benefit year.

Second, we consider why this happened and why it was necessary to seek approval for a new training program. The review examiner found that the claimant could not pursue the human resources management certificate training because Holyoke Community College considered her prior GPA too low to qualify for the school's financial aid, it was too late to apply for a grant under the Workforce Innovation and Opportunity Act (WIOA), and the claimant did not have another way to pay for the course. *See* Finding of Fact # 9. During the hearing, the claimant testified that Holyoke did not tell her it was denying financial aid until the first week of class, and that the school based its denial upon a GPA from 33 years ago. She further explained that she had not applied for a WIOA grant because a counselor told her it was not necessary, as she would qualify for financial aid.² On appeal, the claimant asserts that denying aid based upon a 33-year old GPA was unexpected. We agree.

Subsequently, DUA records show that the claimant promptly notified a Career Center representative, who entered a note on September 28, 2018, stating that the claimant called to report that she was unable to start her program, and the representative advised her to withdraw from Holyoke Community College and to submit a new TOP (Section 30) application as soon as possible.³ Accordingly, the claimant found another Section 30-approved training program,⁴ and she submitted the second Section 30 application on November 28, 2018. This was the medical billing and coding certificate program, which would start the following semester at Springfield Technical Community College. Findings of Fact ## 12 and 13. Apparently, Springfield did not have the same GPA obstacle to financial aid, and the claimant obtained both financial aid and a WIOA grant to pay for the program. *See* Finding of Fact # 11.

In rendering our decision, we are guided by another DUA regulation, 430 CMR 9.04, which states, in relevant part, as follows:

¹ Exhibit 1 is the first Section 30 application, submitted on August 30, 2018. 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).

² This portion of the claimant's testimony is also part of the unchallenged evidence in the record.

³ We take administrative notice of a September 28, 2018, staff note entered by Job Specialist [A] into the DUA's electronic record-keeping system, UI Online, which states, "Clmt called Spec Progs to report that she was not able to start her program and now it looks like Jan 2019. I explained the need for a withdrawal document from Holyoke CC and a new TOP appl as soon as possible. I am putting this issue into Redeterm status."

⁴ The DUA's Massachusetts One Stop Employment System shows that the new training program at Springfield Technical Community College is Section 30-approved.

(2) A claimant who applied to the Director for training shall have his or her total benefits extended up to 26 times his or her benefit rate . . . Such benefits shall be paid only during the period the individual is attending the training course approved by the Director under 430 CMR 9.06 and if:

- (a) the claimant meets the eligibility criteria of 430 CMR 9.04(1);
- (b) the claimant, including a claimant eligible pursuant to 430 CMR 9.04(1)(b)1, applies to the Director for enrollment in training within the 15-week period,⁵ or within the tolled or extended period allowed in 430 CMR 9.06;
- (c) the claimant applies for enrollment in a training program that has been approved or is approvable under the standards set forth in 430 CMR 9.05(2) or (3), . . . and
- (d) *the claimant begins training in the first available program, which is affordable for the claimant or for which funding is available, . . .*

(Emphasis added.)

When the claimant submitted her first Section 30 application, her application and training program met all of the criteria under 430 CMR 9.04(2)(a), (b), and (c), and it appeared to satisfy (d), until the program began and she learned that, in fact, funding was not available. We decline to penalize the claimant for not making other arrangements to cover the Holyoke program tuition, as she could not reasonably have anticipated that a 33-year-old GPA would prevent her from receiving financial aid. It appears that she promptly notified her career counselor and enrolled in the next available program for which funding was available.⁶

Although the claimant's second TOP application was filed on November 28, 2018, after her 20-week application deadline of October 20, 2018, we also decline to disqualify her on the ground that it is untimely, particularly where she never started that first training program. The initial application filed on August 30, 2018, was sufficient to meet the statutory deadline. *See* Board of Review Decision 0020 8343 16, *et seq.* (September 25, 2017) (when Career Center counselor did not complete the steps necessary for WIOA funding and the claimant could not begin the program as scheduled without those funds, second training application for later training was deemed to be filed timely); and Board of Review Decision BR-107628 (Feb. 13, 2009) (where claimant filed a timely TOP application, did not start training because the Career Center did not have the funds to pay for it, and was instructed to submit a second application when the funds came in, held the first TOP application was sufficient to meet the deadline).⁷

⁵ The 15-week application period was extended to 20 weeks by statutory amendment to G.L. c. 151A, § 30(c), in 2016.

⁶ The claimant asserted that she could not enroll again in the same human resources management program when it was next available, because it was no longer going to be Section 30-approved.

⁷ Board of Review Decision 0020 8343 16 is an unpublished decision, available upon request. Board of Review Decision BR-107628 is available at www.mass.gov/dua/bor.

We, therefore, conclude as a matter of law that the claimant's second application for extended benefits to participate in the medical billing and coding certificate program at Springfield Technical Community College is not a second training program within one benefit year pursuant to 430 CMR 9.06(4).

The review examiner's decision is reversed. The claimant is entitled to receive an extension of up to 26 times her weekly benefit rate while attending this training program pursuant to G.L. c. 151A, § 30(c), from the week beginning January 20, 2019, through December 14, 2019, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 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