

Although review examiner erroneously concluded the claimant's chosen program had not been approved for Section 30 benefits, the claimant was nevertheless still ineligible because he submitted his application after his 20th compensable week.

**Board of Review
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Issue ID: 0028 3607 88

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 separated from employment and filed a claim for unemployment benefits on June 22, 2018, which was subsequently approved. On December 11, 2018, the claimant mailed an application for training benefits to the DUA, which was denied in a determination issued on December 20, 2018. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, which the claimant attended, the review examiner affirmed the agency's determination and denied training benefits in a decision rendered on February 8, 2019. We accepted the claimant's application for review.

The extension of the claimant's unemployment benefits were denied because the claimant's chosen training program had not been registered and approved through the Massachusetts One Stop Employment System (MOSES) and, thus, he was ineligible pursuant to G.L. c. 151A, § 30(c) (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, the claimant's appeal, and information available to us through the DUA's UI Online and JobQuest computer databases.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant was ineligible for training benefits because his training program was not DUA-approved, is supported by substantial and credible evidence and is free of error of law.

Findings of Fact

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

1. The claimant filed an initial claim for benefits on 6/22/18.

2. At the time of filing his claim, the claimant was not in attendance at the full time pre apprentice training advance manufacturing program. The claimant enrolled in the program that was to begin on 1/14/19 but did not [start attending] due to a delay in the class startup. The claimant will be attending the training at Quinsigamond Community College which is now slated to begin in March of 2019 and end on 6/30/19.
3. On 12/5/18 [sic], 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 training program # 111879 [sic]. The College's programs approved with the Department of Career Services does [sic] not include program # 111879 [sic].
4. The claimant was informed in an email by the Program Manager at the college as recent as 2/5/19 that the program is still pending under Section 30. (Exhibit 6)
5. On 12/20/18, the DUA issued the claimant a Notice of Disqualification, finding him ineligible for benefits under Section 30(c) of the law because the program he is reportedly attending is not an approved program.
6. On 12/21/18, 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 to determine: (1) whether the findings are supported by substantial and credible evidence; and (2) whether the review examiner's 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, except for the parts of Finding # 3 where the review examiner found the claimant filed his training application on December 5, 2018¹; and where she misidentified the Training Program ID # (as explained in detail, below). 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 findings of fact support the conclusion that the claimant is not entitled to training benefits, we believe that the rationale for denying training benefits derives from a different part of the law.

The review examiner denied the claimant's application for training benefits, concluding he failed to meet the requirements of G.L. c. 151A, § 30(c), which relieves claimants who are enrolled in approved retraining programs of the obligation to search for work, and permits extensions of up to 26 weeks of additional benefits while enrolled in training. The procedures and guidelines for implementation of training benefits are set forth in 430 CMR 9.00–9.09.

¹ The claimant's application for training benefits was mailed in an envelope with a postmark of December 11, 2018. See Exhibit # 1, p. 12. Thus, the date of the claimant's filing was December 11, 2018, and not December 5.

Under G.L. c. 151A, § 30(c), it is the claimant's burden to prove that he fulfills all of the requirements to receive training benefits. The review examiner denied the claimant's request for training benefits because he was not attending a DUA-approved training program. Pursuant to 430 CMR 9.05(2), the training program itself must secure approval to ensure that it meets "certain measureable standards as set forth in 430 CMR 9.05(2)(a) through (e)."

In Finding # 3, the review examiner found that the claimant is attending training program #111879. According to part of the claimant's application for training benefits (Exhibit # 1, p. 4), this program identification number corresponds to a Full-Time Pre-Apprentice Training Advanced Manufacturing program at Quinsigamond Community College (QCC). The review examiner concluded that there is no approved program within the DUA's MOSES and JobQuest databases corresponding to this program number, to show the claimant's chosen program has been approved.

But according to another page within the claimant's application for training benefits (Exhibit # 1, p. 6), the training program identification number for the Full-Time Pre-Apprentice Training Advanced Manufacturing program at QCC is # 1118179.² Our review of the DUA JobQuest computer database shows this program is listed as approved for training benefits from January 14 through June 30, 2019.³ Thus, the claimant's chosen program has met the criteria for approval.

However, as noted in the initial determination from December denying training benefits, even though the claimant's chosen program has been approved for training benefits, the claimant remains ineligible for them. At the outset, the statute requires that a 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. . . .

According to the UI Online computer database, the claimant was issued his first check for unemployment benefits on July 18, 2018, which was during the week ending July 21, 2018, his first compensable week on this claim. From there, it follows that the claimant's 20th

² This entry on Exhibit # 1, while not explicitly incorporated into the review examiner's findings, 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).

³ See <http://jobquest.detma.org/JobQuest/TrainingDetails.aspx?ti=1118179>.

compensable week was the week ending December 1, 2018. But the claimant did not mail his application for training benefits to the DUA until December 11, 2018. *See* Exhibit # 1, p. 12. This was during his 22nd compensable week.

The circumstances set forth by the claimant in his adjudication statement⁴ — the class he “originally planned on taking was not accepting enrollment until November 28, 2018, [and] after taking an assessment for this course it was recommended that I take a different more suitable course” — do not meet any of the criteria for tolling the 20-week deadline within 430 CMR 9.06(3).

We, therefore, conclude as a matter of law that because the claimant failed to meet the 20-week application deadline, he is not eligible for training benefits under G.L. c. 151A, § 30(c).

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 under G.L. c. 151A, § 30(c).

BOSTON, MASSACHUSETTS
DATE OF DECISION – April 29, 2019



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, 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.

JPC/rh

⁴ *See* Exhibit # 2.