

Claimant provided transcripts, academic plans, and testimony from an academic advisor that her associate's degree program is approved for training, she will complete her program within two years, and she will be attending the program on a full-time basis, for all but the last semester. A remedial math course and another course required to remove her from academic probation are necessary to complete her program, even though they are not counted toward the degree itself. And where the claimant will not need a full-time schedule of courses during her final semester, she will remain eligible for training benefits overall, but will not be eligible to receive training benefits during the weeks when she is no longer a full-time student.

**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 9165 35

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 became separated from employment and filed a claim for unemployment benefits on November 6, 2018, which was eventually approved. On January 8, 2019, the claimant filed an application for an extension of benefits to attend a training program (training benefits or Section 30 benefits). On February 8, 2019, the claimant filed a second application for training benefits to attend the same program at the same training provider. On February 15, 2019, the agency issued a determination denying the claimant's application for training benefits. 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 March 19, 2019. We accepted the claimant's application for review.

Training benefits were denied after the review examiner concluded that neither of the claimant's applications was adequately completed, so she did not qualify for the extension of benefits while attending a training program pursuant to G.L. c. 151A, § 30(c), and its applicable regulations. 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 take additional evidence regarding the claimant's program and her progress in that program, including testimony from a representative from the claimant's chosen training provider. The claimant and a representative from her training provider attended the remand hearing, which was continued

over two sessions. 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 decision, which concluded that the claimant was ineligible for training benefits pursuant to G.L. c. 151A, § 30(c), because she did not submit applications sufficient to establish that her participation in the program met the criteria of the statute and its applicable regulations, is supported by substantial and credible evidence and is free of error of law.

Findings of Fact

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

1. The claimant filed a new claim for benefits on 11/6/18 having been permanently separated from employment.
2. The claimant began receiving UI benefits.
3. On 1/8/2019, the claimant filed a "Training Opportunities Program Application", to attend an Associate Degree program in Health Care Administration at Middlesex Community College (MCC).
4. [The] Section 30 unit informed the claimant that the 1/8/2019 application was not complete as a result of the school not completing Part C of the application. The school had only indicated that the claimant would be taking 12 credits during the spring semester that started on 1/22/19 through 5/29/2019. She was informed that she could resubmit another application before her 20th compensable week.
5. The claimant submitted another TOP application on 2/8/2019. Part C was completed with more detail by the school. The school indicated that the claimant needed to complete 60 credits total to earn her degree and that she had already completed 6 credits toward the degree program. The school indicated that the claimant would be taking 12 credits during the spring 2019 semester (which included Psy 125 for 3 credits which was not required under the program but necessary for the claimant to take because she was on academic probation); 7 credits during the summer 2019 semester (which included Mat 002 for 3 credits which was not part of the program but required as a prerequisite in order for the claimant to be eligible for college math); 13 credits during the fall of 2019 semester and 17 credits during the spring of 2020 semester. (Exhibit 4, page 5)
6. On 2/15/19, the claimant was issued a determination denying her approval under Section 30 because the TOP application was not adequately completed.
7. The claimant appealed the disqualification on 2/21/19.

8. MCC requires 60 college level credits to graduate from the claimant's program.
9. It generally takes 4 semesters for a student to complete this program.
10. A student should average 15 credits per semester in order to complete this program within the 4 semester time frame.
11. There is no clinical training required to earn this degree.
12. "The claimant initially began her studies at MCC in fall 2010 (September 7, 2010) but was not taking college level credits in that semester. The claimant attended through summer 2012, and 3 credits of college-level coursework which she took during that time (in spring 2012) was [sic] applied to her current program. She began all other courses applicable to her current program in spring 2019 (January 22, 2019)." (Remand Exhibit 12, page 1)
13. MCC applied 3 transfer credits towards the claimant's degree.
14. The spring 2019 semester began on 1/22/19 and ended on 5/17/19. The claimant took Bio 105 for 3 credits; Cap 101 for 3 credits; Psy 101 for 3 credits and Psy 125 for 3 credits. Only 9 credits were applied towards her degree. The school maintains a pre-academic policy if a student is on academic warning they need to complete Psy 125 to enroll in the institution and these credits do not apply towards the claimant's degree.
15. The summer of 2019 began on 5/28/19 and ends 8/8/19. There are various summer sessions. A student must enroll in at least 6 credits to be considered full time during the summer. The claimant is enrolled in Ethics 101 for 3 credits and Mat 002 for 3 credits. The 3 credits for Ethics will go towards the claimant's degree. The 3 credits for Mat 002 will not go towards the claimant's degree since it is a developmental course to prepare the claimant for college level math courses. By taking the Mat 002 the claimant will be eligible for Statistics in the fall of 2019.
16. The fall 2019 semester begins on 9/4/19 and ends 12/20/19. The claimant will be [taking] Mas 101 for 3 credits; Bus 110 for 3 credits; Mat 177 for 3 credits; IDS for 1 credit and Bio 131 for 4 credits. This is a total of 14 credits. The claimant will be taking Ethics 101 course over summer 2019 semester. [sic] All 14 credits will go towards the claimant's degree.
17. The spring 2020 semester will begin on 1/22/20 and end 5/15/20. The claimant will be taking AHP 104 for 3 credits; AHP 105 for 3 credits; Bus 212 for 3 credits, Bus 221 for 4 credits and IDS 103 for 1 credit. The claimant will be enrolled in 14 credit course [sic] during the spring 2020, not 17 credits as previously determined. All 14 credits will go towards the claimant's degree.

18. The summer 2020 semester will begin on 5/26/20 and end 8/7/20. The claimant will be taking AHP 108 for 3 credits and ECO 140 for 3 credits. All six credits will go towards the claimant's degree.
19. The fall 2020 semester will begin on 9/8/20 and end 12/21/20. The claimant will be taking AHP 220 for 3 credits and AHP 225 (Internship) for 1 credit during the fall 2020 semester. All 4 credits will go towards the claimant's degree.
20. There will be no remaining courses needed to be completed by the claimant after fall 2020 semester to meet the program requirements.
21. As of June 5, 2019, the claimant has completed a total of 15 credits. 12 of the 15 credits were earned at MCC and the remaining 3 credits were accepted as transfer credits.
22. The claimant is expected to complete the program by December 2020.
23. MCC has received approval for the claimant's chosen program to be added to the Section 30/TOPS-approved program list by the DUA. It is not known when MCC received approval. The MOSES/Training Pro identification number is 1113863. The approval received by MCC of the program is only good through June of 2019.
24. The MCC official provided an updated letter to reflect an adjustment in the claimant's course of study. The mapping initially provided is the ideal pathway for full time students at a college level to complete the program in two years. Most students at the Community College are part time students who do not fit the criteria of the mapping. Those students who do not fit the criteria such as the claimant develop an individual plan for the student to complete the program. [See Remand Exhibit # 16.]
25. The claimant will not be required to take any remedial or "basic Skills" prerequisite courses other than Mat 002.
26. MCC does not require any form of clinical training in order to earn this degree.
27. MCC does believe the claimant can complete her program requirements by the end of the fall 2020 semester in December of 2020.

Ruling of the Board

In accordance with our statutory obligation, we review the record and the decision made by the review examiner to determine: (1) whether the consolidated 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 consolidated findings of fact and deems them to be supported by substantial and credible evidence.

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 she fulfills all of the requirements to receive a training extension.

The claimant's application for training benefits sought approval to participate in an associate degree program in health care administration at Middlesex Community College (MCC). The claimant submitted two separate applications for training benefits. The first, which the DUA received on January 8, 2019, provided only information about courses the claimant would take during the spring 2019 term. *See* Finding # 3; Hearing Exhibit # 2. The claimant's second application for training benefits was received by the DUA on February 8, 2019, and it provided more information about the claimant's anticipated coursework but still did not completely set forth her anticipated progress through the end of her training program. *See* Finding # 5, Hearings Exhibit # 3. The review examiner affirmed the denial of training benefits because neither of the claimant's Section 30 applications was complete.

However, as the claimant pointed out on her appeal to the Board, she had presented documentary information from MCC that included her anticipated coursework for all the terms in which she planned to attend, which the review examiner had not factored into her analysis and conclusion. *Compare* Remand Exhibit # 2 and Hearing Exhibit # 5. We remanded the case for the claimant to provide this additional evidence.

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 qualifying programs. In order to ensure that training providers adequately prepare claimants to rejoin the workforce, and will communicate with the DUA if there is a change in the claimant's enrollment status, their training programs must demonstrate measurable standards, and training providers must apply with the DUA for their programs to be approved for training benefits. The procedures and standards for approving training programs are enumerated within 430 CMR 9.05.

After remand, the review examiner found that the claimant's program at MCC was approved for Section 30 benefits through June 2019. *See* Finding # 23 and Remand Exhibits ## 4–6. Thus, we conclude that the claimant's training program meets the requirements of 430 CMR 9.05, as a matter of law.

A claimant in an approved training program also must be able to complete her program within a proscribed time limit. Specifically, 430 CMR 9.05(2)(c) states:

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 remand, the review examiner found that the claimant must earn 60 credits to complete her degree at MCC. As of the date of the remand hearing, MCC applied three transfer credits from prior college courses to the claimant's academic record. *See* Finding of Fact # 13. As of the date of the remand hearing, the claimant had earned 12 credits from MCC, for a total of 15 toward the 60 credits required to earn her degree. *See* Finding of Fact # 21.

Our remand order sought corroboration from an official at MCC that the claimant would be able to successfully complete her program within two years. *See* Remand Exhibit # 3. Both the claimant and MCC's Director of Advising and Academic Pathways (the MCC Director) provided testimony, corroborated by ample documentation, that the claimant will be able to complete all of the requirements for her degree by the end of the fall 2020 term in December 2020.

These documents included the claimant's official transcript from MCC (Remand Exhibit # 7), the MCC "Academic Map" for the Healthcare Administration program (Remand Exhibit # 8), the claimant's "Degree Works" worksheet from MCC (Remand Exhibit #9), course descriptions for two courses the claimant is taking that do not officially count toward her degree (Remand Exhibits ## 10–11), the claimant's report card for the Spring 2019 term (Remand Exhibit #14), her official schedule for the summer 2019 term (Remand Exhibit #15), and written responses from the MCC Director which addressed each of the Board's questions on remand in detail (Remand Exhibit # 16). We note that the MCC Director reiterated and amplified the written responses he provided with testimony and supplemented the initial response he had provided. We, therefore, conclude as a matter of law that the claimant will complete her training program within the two-year requirement of 430 CMR 9.05(2)(c).

Finally, a claimant must demonstrate that she is attending her program on a full-time basis in order to qualify for training benefits. These extended benefits are only available while the claimant is attending her program. Specifically, 430 CMR 9.05(2)(b)(1) states that:

[t]raining 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 [i]f 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

Again, both the claimant and the MCC Director provided testimony, corroborated by ample documentation, that the claimant will attend her program on a full-time basis for all but the last semester.

Specifically, for the spring 2019 term, which runs from January 22 through May 17, 2019, the claimant took four courses for a total of 12 credits that semester. While only nine of those credits were formally applied toward her degree, the other three-credit course was required by MCC in order for the claimant to be removed from academic probation. *See* Finding of Fact # 15. As such, we conclude that the course at issue was necessary for the claimant to complete her program.

For the summer 2019 term, which runs from May 28 through August 8, 2019, the claimant took two three-credit courses, for a total of six credits. Again, one of these courses will not be applied toward the claimant's degree because it is a developmental mathematics course that she must satisfactorily complete to qualify for college level math courses which are required for her program. *See* Finding of Fact # 15. Thus, even though the remedial math course was not applied to the claimant's degree, we conclude that it is necessary for the claimant to be able to complete her program.

Going forward, the claimant and the MCC Director established that the claimant will take 14 credits during the fall 2019 semester, which runs from September 4 through December 20, 2019. All of these credits will be applied toward her degree. *See* Finding of Fact # 16.

For the spring 2020 semester, which runs from January 22 through May 15, 2020, the claimant will take five courses for 14 credits, all of which will be applied toward her degree. *See* Finding of Fact # 17.

For the summer 2020 semester, which runs from May 26 through August 7, 2020, the claimant will take two courses for six credits, all of which will be applied toward her degree. *See* Finding of Fact # 18. As noted above, six credits are considered to be full-time for the summer term at MCC.

Finally, for the fall 2020 semester, which runs from September 8 through December 21, 2020, the claimant will take two courses for four credits, which is all that will remain to earn her degree. Although this will not be full-time, the Board has previously held that students who can complete their programs within the two-year limit on a full-time basis, but who do not need 12 credits during their final term, should not be penalized by being disqualified outright from receiving any training benefits, and should not be required to take additional courses which they do not need in order to maintain eligibility for training benefits. *See* Board of Review Decision 0018 3639 73 (Nov. 30, 2016).

Following this precedent, the claimant will be eligible for training benefits while attending this training program on a full-time basis. She will not be eligible for training benefits during the fall 2020 term, when she will no longer be a full-time student.

The review examiner's decision is reversed. The claimant is entitled to receive an extension of up to 26 times her weekly benefit rate, and a waiver of the availability and work search requirements, while attending this program, from the week beginning January 20, 2019, through August 8, 2020, pursuant to G.L. c. 151A, § 30(c), if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION – August 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