

**The review examiner incorrectly calculated the claimant's 20<sup>th</sup> compensable week. Applying the proper method of calculation showed the claimant timely filed her application for training benefits under G.L. c. 151A, § 30(c). Where DUA had approved her chosen program for training benefits, the claimant was eligible for the extension of benefits while participating in this training program.**

**Board of Review  
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Member**

**Issue ID: 0028 9188 59**

## **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 reverse.

The claimant became separated from employment and filed a claim for unemployment benefits on July 31, 2018, which was subsequently approved by the DUA. On January 9, 2019, the claimant filed an application with the DUA for an extension of benefits to attend a training program, which the agency denied on January 29, 2019. The claimant appealed that 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 March 6, 2019. We accepted the claimant's application for review.

Training benefits were denied after the review examiner concluded that the claimant had not timely submitted her application for training benefits and, thus, was ineligible pursuant to 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, the claimant's appeal, and information available to us through the DUA's UI Online and JobQuest computer database systems.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant was ineligible for training benefits because she did not submit her application before her 20<sup>th</sup> compensable week of her claim, 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. According to the computer records on 7/31/18 the claimant filed an initial claim for unemployment benefits, and that claim was made effective 7/29/18 with a benefit year end date of 7/27/19.
2. According to the computer records the claimant was determined to be monetarily eligible for a weekly benefit rate of \$587.00 and a total of 30 weeks of benefits at that rate, for a maximum benefit amount of \$17,610.00.
3. According to the computer records the claimant served a one week waiting period with the week ending 8/4/18 and she began to be paid unemployment benefits with the week ending 8/11/18.
4. On 1/9/19, the claimant submitted a completed Training Opportunities Program (TOPS) Application to the Department of Unemployment Assistance (DUA) which indicated that the claimant was to start a full time course at New Horizon School where she would begin the Web Design training program on 1/22/19, and according to the school the course is scheduled to complete on 4/12/19. The claimant is attending the classes 20 plus hours per week, 5 days per week. The classes take place during the day generally 9 a.m. to 5 p.m.
5. On the TOPS application the following information is printed:

**Important: Return this application as soon as possible. To be eligible for the additional 26 weeks of Unemployment Insurance Benefits while in approved training, you must return your completed application before the end of your 20<sup>th</sup> compensable week of Unemployment Benefits (which is before the end of the 21<sup>st</sup> week of your Unemployment Claim), unless you have an acceptable reason for missing this deadline.**

6. The claimant did not begin looking into training earlier in her claim because she believed that she would find a job.
7. When she didn't find a job she realized that training would open up the labor market for her.
8. Because the claimant applied to the school during the Christmas holidays, she was unable get the paperwork completed and submitted until 1/9/19.

### 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 failed to file her application timely.

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 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. *See* 430 CMR 9.01. The procedures and standards for approving training programs are enumerated in 430 CMR 9.05.

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 claimant's application for training benefits was initially denied by the DUA as untimely filed. *See* Exhibit # 3. The review examiner affirmed the denial because she calculated the claimant's 20<sup>th</sup> compensable week to be the week ending December 22, 2018. The review examiner's calculation was wrong, as a matter of law.

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 her first unemployment check on her claim. *See* Board of Review Decision 0022 2673 94 (Jan. 31, 2018).

Applying the proper standard to this case, we take administrative notice that the DUA issued the claimant her first check for benefits on September 1, 2018. Therefore, her first compensable week was actually the week ending September 1, 2018, and her 20<sup>th</sup> compensable week was the week ending January 12, 2019. The claimant mailed her training application to the DUA with a postmark of January 9, 2019. *See* Exhibit # 1, p. 7. Thus, we conclude, as a matter of law, that her application was timely filed.

The claimant's chosen program at New Horizon School has been assigned Training Pro/MOSES Course ID # 1071181. *See* Exhibit # 1, p. 3. We take administrative notice that the claimant's chosen program is listed as approved in JobQuest.<sup>1</sup> We, therefore, conclude as a matter of law that the claimant is eligible for training benefits pursuant to G.L. c. 151A, § 30(c), and 430 CMR 9.00 *et seq.*

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 her training program, from January 22, 2019, through April 12, 2019, if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - April 29, 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.

JPC/rh

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<sup>1</sup> *See* <http://jobquest.detma.org/JobQuest/TrainingDetails.aspx?ti=1071181>.