0029 1195 45 (June 27, 2019) – Claimant, who decided not to attend an approved training program because she was pursuing a job, did not have good cause for filing a second Section 30 application after exhausting regular benefits without securing employment. Nor did she establish that her education and work experience in the field of marketing were inadequate to find work, or that her chosen aesthetician program was necessary for her to obtain suitable employment. Hearing examiner is not limited to the specific grounds for disqualification stated in the DUA determination.

Board of Review
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Issue ID: 0029 1195 45

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 (training benefits). We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

The claimant became separated from employment and filed a claim for unemployment benefits on June 12, 2018, which was ultimately approved by the DUA. On August 10, 2018, the claimant mailed an application to the DUA for an extension of benefits to attend a training program, which the agency initially granted on August 21, 2018. The claimant chose not to begin her training program, and the DUA rescinded the award of training benefits in a redetermination issued on October 9, 2018.

On or about January 23, 2019, the claimant mailed a second application for training benefits to the DUA, which was denied on February 1, 2019. 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 initial determination and denied training benefits in a decision rendered on March 26, 2019. We accepted the claimant's application for review.

Training benefits were denied after the review examiner concluded that the claimant did not timely file her application for training benefits or meet any of the tolling provisions for filing after the 20-week deadline, and her chosen program was not necessary for her to obtain suitable employment. Thus, the claimant did not meet the requirements for training benefits pursuant to G.L. c. 151A, § 30(c), and 430 CMR 9.04 and 9.06(3). 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, which concluded that the claimant was ineligible for training benefits because she does not need retraining to obtain suitable employment, and because she filed after the 20-week deadline without meeting any of the tolling exceptions set forth in the applicable regulations, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant established an initial claim for benefits with an effective date of 6/10/18. While on the DUA website, the claimant saw information about the Training Opportunities Program (TOP) and considered applying.

2. Prior to filing her claim, the claimant worked for 20 years as the Director of Marketing Communications at an aesthetic laser company. The claimant permanently separated from this position in mid-June, 2018. The claimant holds a Bachelor of Science degree in Marketing.

3. After filing her initial claim for benefits, the claimant attended a career center seminar. The claimant subsequently completed a required Labor Market Analysis and found that there was projected growth in careers related to the field of Marketing. Based upon her education and experience, the positions of Marketing Manager, Product Manager, and Writer (of press releases) were identified as suitable for the claimant.

4. On 8/21/18, the claimant submitted a TOP application to the DUA, seeking approval of benefits under Section 30 while in attendance at an aesthetics career training program at Spa Tech Institute (Spa Tech), located in Ipswich, Massachusetts. The claimant chose this program because it would allow her to open a med-spa business or obtain work in the field. The program was scheduled to begin on 9/19/18 and end on 4/10/19. The claimant planned to attend 24 hours of training per week; the claimant was required to complete 600 hours of training in order to successfully complete the program. The DUA approved the claimant's application.

5. The claimant was issued her 10th [sic] compensable week of unemployment insurance benefits after certifying her eligibility for the week ending 8/25/18.

6. On 9/5/18 at 9:56 a.m., a prospective employer, for whom the claimant worked in the past, contacted her by email to discuss potential work as a Marketing Communications Manager. The claimant responded on 9/5/18 at 10:30 a.m., informing the prospective employer that she was available the next morning, 9/6/18, or anytime on 9/7/18. The prospective employer responded, telling the claimant that she would call at 9:30 a.m. on 9/6/18.

7. On 9/6/18 at 9:44 a.m. [sic], the claimant called the Department of Career Services MassHire office, located in [Town A].

8. After speaking with the prospective employer on the morning of 9/6/18, the claimant was told that she would be moved on to the next round of interviews. The claimant felt she had a good chance of getting the job due to her history with the company, and because her family members are employed there. The claimant was aware that the position would pay an annual salary of approximately $150,000. The claimant considered attending the training program during evening hours, while working for the prospective employer. The claimant decided this would not be feasible because the prospective employer told her that the position would involve 50% travel and a schedule of approximately 60 hours per week. On 9/6/18, the claimant notified Spa Tech that she would not attend the program "…because she had interviews scheduled for full-time, corporate work and she felt she needed to pursue those opportunities." (Exhibit 17) The claimant was aware that, in advance of attending the training program at Spa Tech, she must pay a non-refundable deposit. The deposit was due approximately one week after she was contacted by the prospective employer. The claimant did not pay the deposit when required because she decided to pursue the position with the prospective employer. The claimant did not consider attending the interview on 9/18/18 and then start the training program on 9/19/18 because she concluded that once she started the interview process with the prospective employer she would not be available to attend training.

9. On 9/10/18, the prospective employer's lead recruiter notified the claimant that a telephone interview was scheduled for 9/18/18. Following the telephone interview, the claimant attended a series of in-person interviews during the period of September through early November. The claimant was required to make a formal presentation at the end of November. The claimant was aware at that time that she and only one other candidate were vying for the position.

10. On 9/23/18, the claimant completed the DUA weekly certification process and indicated on her Schedule Training Questionnaire that she was not in attendance at training during at least 20 hours per week. Based on her responses, the DUA issued the claimant a fact finding questionnaire.

11. On 9/24/18, the claimant completed the DUA questionnaire. The claimant responded "No" to a question that asked: "Will you attend training/academic classes beyond your Agency approved end date?" The claimant responded "No" to a question that asked: "Are you in school at least 20 hours per week, OR enrolled in at least 12 credit hours per semester?" The claimant responded "No" to a question that asked: "Are you requesting approval for additional training benefits?"

12. On 10/9/18, the DUA issued the claimant a Notice of Redetermination, finding her ineligible for benefits under Section 30. The claimant did not

appeal the Notice because she was not concerned with it. The claimant thought the Notice was correct and everything would be fine because she expected she would get the job she was interviewing for.

13. On 1/13/19, the claimant completed the certification process to claim unemployment insurance benefits for the week ending 1/12/19, her 30th compensable week. The claimant exhausted the balance of available unemployment benefits.

14. During the second week of January, the claimant checked on her status with the prospective employer by contacting its recruiter. The claimant was told that the recruiter was not receiving a response to her inquiry about the claimant's status. The claimant realized that she could not count on the job and decided to move on to her "Plan B" and pursue training. On 1/17/19, the claimant obtained a second TOP application.

15. On or about 1/18/19, the claimant contacted the DUA to discuss her TOP application because she decided to attend the Spa Tech training program. The claimant was told that she needed to submit a new TOP application and letter from the training program to the DUA.

16. On 1/18/19, the claimant submitted a TOP application, seeking benefits while in attendance at a training program at Spa Tech. The program was scheduled to begin on 1/23/19 and end on 8/8/19. Along with her application, the claimant submitted a letter, written by staff at the training facility, and one that she authored. In her letter, the claimant wrote in relevant part: "I was intending to begin the Aesthetics Program at Spa Tech Institute to begin a new career since I have been searching every single day for a job since June 2018. But about a week before I needed to commit to the program, I received 2 calls for interviews and was a strong candidate. I struggled with the decision because I am a single woman and going into a job was more secure. I did not get offered either role. Now my unemployment has ended and I want to attend the same program at the same school so I can start my own business next October and be self-sufficient." The claimant did not write in her letter that she was told by a DUA or DCS employee that she must attend the interview on 9/18/18 or her benefits would be in jeopardy. The claimant did not write in her letter that she was told by a DUA or DCS employee that because her previous application was approved, she would be able to attend the training program at a later date.

17. On 1/25/19, the claimant completed a DUA fact finding questionnaire. The questionnaire was issued by the DUA because the claimant's second TOP application was submitted after the 20th compensable week deadline. In her responses, the claimant wrote: "Hi, I had completed a form previously before the deadline and it was approved for Spa Tech Institute, but right before classes were to begin, I received calls from 2 companies for interviews. I had to make a very tough decision to pay my tuition and go to school or proceed

with the interviews. I decided to go to the interviews and unfortunately was not offered either job. I have since decided to go to school and start a small business after graduating…" The claimant did not write in her responses that a DUA or DCS employee told her that she must attend the interview on 9/18/18 or her benefits would be in jeopardy. The claimant did not write in her responses that a DUA or DCS employee told her that because her previous application was approved, she would be able to attend the training program later.

18. On 2/1/19, the DUA issued the claimant a Notice of Disqualification, finding her ineligible for benefits under Section 30.

19. On 2/1/19, the claimant submitted an electronic appeal. In her appeal, the claimant wrote in part: "I was following all of the rules of the system and had originally had an approval by the 20 week deadline. I was trying to get off unemployment, so the week I was about to begin the program, when I received calls from 2 companies, I decided to go to the interviews and therefore could not attend the program. I did not get an offer from either company after several interviews over a period of time and have been searching for 6 months. I have decided I need to change careers to get back to work and I have now enrolled in the same program and it started Jan 23, but in order to complete the program in August, I was hoping the TOP application would still be available, but I was denied…" The claimant did not write in her appeal that a DUA or DCS employee told her that she must attend the interview on 9/18/18 or her benefits would be in jeopardy. The claimant did not write in her appeal that a DUA or DCS employee told her that because her previous application was approved, she would be able to attend the training program later.

Credibility Assessment:

It is worth noting that the claimant contended during the hearing that she did not attend the training program, after receiving initial approval from the DUA, because of misinformation from a DUA employee. The claimant contended that the misinformation resulted in her believing that she must attend a scheduled job interview with a prospective employer, and that she had approval to attend a future session of the approved training. The claimant requested that based upon this alleged misinformation, her second application be considered a timely submission. The claimant's testimony in this regard was not credible and was therefore give no weight.

The claimant testified to having spoken with a DUA employee on 9/10/18 and being told that her attendance at the job interview with the prospective employer was mandatory, and that everything would be fine if things didn't work out because she could possibly attend school during the next semester. The claimant also testified that after speaking with the DUA on 9/10/18 she thought she had approval to attend training at a later date because she was not told that she would

need to re-enroll or submit a second TOP application. The claimant was aware on 10/9/18, after receiving the Notice of Disqualification, that her approval to attend the training program was revoked. The claimant testified that she chose not to file an appeal of the 10/9/18 Notice because she thought she would be successful in obtaining new work. Likewise, the claimant did not indicate in her responses on the 9/24/18 DUA questionnaire that she intended to attend training after the end date of the initial approval, or that was she seeking approval for additional training benefits. The claimant's contention that she thought the training approval extended beyond October 2018 has no basis in fact based upon her testimony and the evidence in the record.

Further, the claimant testified to having contacted the DUA on 9/10/18, after being scheduled for an interview, and that she was told that she must attend the interview. The claimant was asked to furnish the Review Examiner with telephone records to support her testimony. The claimant subsequently submitted a phone record that reflected a call to the [Town A] MassHire office at 9:44am on 9/6/18, which was one day after the claimant accepted the offer of an interview with the prospective employer. The claimant did not produce any evidence to show that she contacted the DUA. Likewise, along with the phone record, the claimant submitted a written statement in which she asserts that during the hearing she "misremembered" the exact details of the telephone call. The claimant's inability to accurately recall the details of the telephone call detracts from her contention that an Agency employee provided her misinformation. Further, the claimant informed the DUA in her personal letter that she "struggled with the decision", and in her 1/25/19 appeal, she wrote that she "had to make a very tough decision to pay my tuition and go to school or proceed with the interviews. I decided to go to the interviews…" The claimant never informed the DUA, prior to the day of her hearing, that her decision to pursue work and forego training was due to any factor other than a personal decision. The claimant's written statements, related to her struggling with the decision and needing to make a tough decision, detract from her contention that her actions were the result of misinformation and not her personal choice.

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. After such review, the Board adopts the review examiner's findings of fact except as follows. First, we note that Finding of Fact # 5 inaccurately cited the week ending August 25, 2018, as the claimant's 10th compensable week. DUA computer records show that the claimant was issued her first check on July 7, 2018, and the week ending August 25, 2018, was the claimant's 8th compensable week.[1] Second, we note that Finding of Fact # 7 misreads the telephone record the claimant furnished as Exhibit # 22, p. 5. The claimant called the MassHire office at 9:14 a.m.,

[1] We take administrative notice of the benefit payment date shown in the DUA's electronic record-keeping system, UI Online.

not 9:44 a.m.[2] In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. We further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented.

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 implementing this training benefit 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.

At the outset, the statute requires that the claimant apply for training benefits within a prescribed 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 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 regulations specifying circumstances when the 20-week application deadline may be tolled are set forth in 430 CMR 9.06(3).

The claimant's second application for training benefits was denied because both the adjudicator and the review examiner concluded that the claimant failed to meet the 20-week deadline required by the statute, and failed to satisfy any of the tolling provisions enumerated in 430 CMR 9.06(3). The claimant argues on appeal that she was given misinformation by the DUA, and that 430 CMR 9.06(3)(c) should toll the 20-week deadline. We disagree and conclude that the claimant did not credibly establish that she meets any of the tolling criteria of 430 CMR 9.06(3).

The review examiner found that the claimant withdrew from an aesthetics training program at Spa Tech Institute (Spa Tech) on September 6, 2018. *See* Exhibit # 17. The claimant instead

[2] We disagree with the claimant's assertion on appeal that this simple misreading of a difficult-to-read facsimile copy of the claimant's telephone records is a "material fact" constituting "grounds for reversal." Similarly, whether the records show the claimant called the MassHire office in [Town B] or [Town A] does not affect the outcome here. Although the review examiner misread the time the claimant called the DCS, the rest of her extremely detailed credibility assessment is reasonable in the relation to evidence in record in its totality and is not affected by this oversight.

began an interview process for a job with an employer for which she had worked previously, and which would pay approximately $150,000.00 annually. The claimant chose to pursue this employment opportunity rather than pay a non-refundable deposit to Spa Tech.

The review examiner found that after choosing to pursue employment rather than training, the claimant responded to a DUA questionnaire on September 24, 2018, that she would not "attend training/academic classes beyond [her] Agency approved end date," was not "in school at least 20 classroom hours per week," and was not "requesting approval for additional training benefits. *See* Exhibit # 4.

The review examiner also found that when the DUA issued a Notice of Redetermination rescinding the prior approval for training benefits on October 10, 2018, the claimant did not appeal the Notice, believed it was correct, and expected things would be "fine" for her because she would get the job for which she was interviewing.[3]

By January 13, 2019, the claimant had exhausted her regular unemployment benefits and had not secured the job for which she had been interviewing. The claimant decided to move forward with "Plan B" to attend a training program at Spa Tech, obtained a new Training Opportunities Program (TOP) application, called the DUA on or about January 18, 2019, and was told she would have to submit a new TOP application if she wished to pursue training.

The DUA received the claimant's second TOP application to attend an aesthetician program at Spa Tech on January 25, 2019. *See* Exhibit # 6. The claimant began attending the program on January 23, 2019, and anticipates completing it by August 8, 2019.

The review examiner found that the claimant made three separate, contemporaneous statements to the DUA regarding her second application for training benefits. The first statement was part of the claimant's second TOP application submitted to the DUA on January 21, 2019. With this application, the claimant submitted a handwritten letter noting: "a week before I needed to commit to the [Spa Tech] program, I received 2 calls for interviews and was a strong candidate. I struggled with the decision because I am a single woman and going into a job was more secure. I did not get offered either role. Now my unemployment has ended and I want to attend the same program at the same school so I can start my own business next October and be self-sufficient. Please regard this as still being within the deadline since it was once approved in time." *See* Exhibit # 18.

The second statement cited by the review examiner in her findings is a fact-finding questionnaire sent electronically by the claimant to the DUA on January 25, 2019. In this document, the claimant repeated the substance of her handwritten note to the DUA by saying: "[R]ight before

[3] Although the document itself is not in evidence, we note that the Redetermination and Notice of Disqualification issued to the claimant on October 10, 2018, rescinding the initial award of training benefits, specifically reminded the claimant: "You have up to your twentieth compensable week of unemployment benefits or within two weeks from the date on this determination letter to file anew [sic] application to a school whose program meets the regulatory requirements." *See* Issue ID# 0026 6285 91. We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. *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).

classes were to begin, I received calls from 2 companies for interviews. I had to make a very tough decision to pay my tuition and go to school or proceed with the interviews. I decided to go to the interviews and unfortunately was not offered either job. I have since decided to go to school and start a small business after graduating. Please consider extending my benefits While [sic] I attend school to get my Aesthetics License." *See* Exhibit # 8.

The review examiner further found that, after the DUA denied the claimant's second application for training benefits on February 1, 2019, as being untimely, the claimant appealed electronically with substantially the same content, saying: "[T]he week I was about to begin the program, when I received calls from 2 companies, I decided to go to the interviews and therefore could not attend the program. I did not get an offer from either company after several interviews over a period of time and have been searching for 6 months. I have decided I need to change careers to get back to work and I have now enrolled in the same program and it started Jan. 23, but in order to complete the program in August, I was hoping the TOP application would still be available, but I was denied." *See* Exhibit # 10.

In each of the review examiner's findings about the claimant's prior statements to the DUA regarding her attendance in her approved training program, the review examiner stated:

> The claimant did not write in her [responses] that a DUA or DCS employee told her that she must attend the interview on 9/18/18 or her benefits would be in jeopardy. The claimant did not write in her [responses] that a DUA or DCS employee told her that because her previous application was approved, she would be able to attend the training program later.

The review examiner used these facts to support a detailed credibility assessment rejecting the claimant's assertions during the hearing that (1) she was told attending her job interview in September 2018 was mandatory; (2) that "everything would be fine if things didn't work out because she could possibly attend school" later; and (3) the claimant thought she had approval to attend training at a later date because she was not told she would need to re-enroll or submit a second TOP application.

In rejecting the claimant's contention that she was misled by DUA or DCS staff, the review examiner concluded:

> The claimant never informed the DUA, prior to the day of her hearing, that her decision to pursue work and forego [sic] training was due to any factor other than a personal decision.

Such assessments are within the scope of the fact finder's role, and, unless they are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. *See* School Committee of Brockton v. Massachusetts Commission Against Discrimination, 423 Mass. 7, 15 (1996). We conclude that it was not unreasonable for the review examiner to find the claimant's prior, contemporaneous representations to the DUA — none of which referenced any alleged misinformation given to her by DUA or DCS staff — more credible than her subsequent testimony at the hearing. We further conclude that the review examiner's findings and

credibility assessment do not reflect bias and are not based on factual errors, illogical inferences, or omissions, as alleged on appeal.

To the extent that the claimant argues that the questions in these questionnaires only sought "yes/no" answers, we note that the review examiner's findings incorporated verbatim the claimant's narrative responses to open-ended questions, and they do not reference any misinformation from DUA or DCS staff.

In her appeal, the claimant argues that the second TOP application should relate back to the original, timely application. She refers to prior Board decisions that ruled the first application date controlling, *citing* Board of Review Decision 0020 5027 53 (June 28, 2017) (claimant did not begin training due to DUA's delay in approving the program after the initial program start date); 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). The Board has not granted blanket authorization for every second TOP application to relate back to the date of a claimant's first application. In the cited cases, the reasons for not beginning the program that had been initially approved were factors for which the claimant was not responsible. *See also* 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). In the present case, the claimant was entirely responsible for choosing not to begin the program approved in her first application.

The claimant also argues that the review examiner improperly considered whether the claimant needed this training program to obtain new employment. We note at the outset that nowhere in the claimant's appeal does she contend that she actually *needs* this training program to obtain suitable employment. Rather, the appeal merely states that the review examiner should have limited her decision to the timeliness of the claimant's application. This is incorrect as a matter of law.

The claimant's right to appeal the disqualifying determination, as well as the conduct of her first level unemployment appeal hearing, are prescribed under G.L. c. 151A, § 39(b), which states in relevant part as follows:

> The manner in which disputed claims shall be presented, and the conduct of the hearings, shall be in accordance with chapter thirty A, and such other procedures as prescribed by the commissioner which are not inconsistent with chapter thirty A. Such procedures shall include provisions for the following:
>
> (1) reasonable notice of the time and place of the hearing to all parties in order to permit adequate preparation;
>
> (2) notice of the issues to be considered thereat;
>
> (3) the right of representation by an agent, counsel, or advocate;

> (4) the right to produce evidence and offer testimony, examine and cross-examine witnesses; . . .
>
> The decision of the commissioner or his authorized representative shall be based solely on the testimony, evidence, materials and issues introduced at the hearing. . . .

There is nothing in G.L. c. 151A, § 39(b), or in the regulations that govern unemployment appeal proceedings under G.L. c. 30A, that restricts a review examiner's authority in an appeal decision to the adjudicator's factual basis for the underlying eligibility determination. *See* 801 CMR 1.02. The legal issue before the DUA adjudicator was whether the claimant was eligible for benefits, pursuant to G.L. c. 151A, § 30(c). The same legal issue came before the review examiner on appeal and was noticed to the claimant in advance of the hearing. *See* Exhibit 11.[4]

Relying upon additional evidence and alternate grounds for disqualification, which may not have been initially presented or made clear to the DUA adjudicator, is nothing new. Consider, for example, the Supreme Judicial Court's decision in Jean v. Dir. of Division of Employment Security, 394 Mass. 225 (1985). In that case, the DUA's determination disqualified the claimant for being intoxicated at work and using foul language. Id. at 227. On appeal, the hearing notice stated merely that the issue was whether the claimant's discharge was attributable to deliberate misconduct in wilful disregard of the employer's interest. Id. During the unemployment hearing, the employer clarified that the claimant was discharged for leaving the plant without permission and for insubordination. Id. The Court upheld the hearing examiner's decision disqualifying the claimant for leaving the premises without permission and insubordination.[5] Id. at 227.

A claimant's *need* for training is a proper consideration in determining whether or not she is eligible for training benefits. The purpose of G.L. c. 151A, § 30(c), is set forth in 430 CMR 9.01:

> The general goal of [Section 30(c)] is to allow claimants to acquire the new skills *necessary* to obtain employment (emphasis added).

The rationale for determining whether training is necessary is set forth in 430 CMR 9.04:

> Claimants may be eligible for approved training if it is determined that they are permanently separated from work, *unlikely to obtain suitable employment based on their most recently utilized skills, and in need of training* to become re-employed; or if it is determined that they have been separated from a declining occupation, or they have been involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations and they are training for a high-demand occupation. (Emphasis added.)

[4] Exhibit 11 is the hearing notice referencing Section 30 and 430 CMR 9.00 — "Whether the claimant's application for Section 30 training shall be approved and, if so, whether the claimant is entitled to additional benefits of up to twenty-six times his/her benefit rate" as the issue to be heard.

[5] The Board of Review had denied review, in effect adopting the review examiner's decision. Id. at 226.

Here, the review examiner considered the claimant's prior education, work experience, and employment prospects when issuing her decision. The claimant has a bachelor of science degree in marketing and substantial experience as a director of marketing communications at her most recent job. The claimant attended a career center seminar and completed a required Labor Market Analysis that showed projected growth in careers related to her field of experience in marketing. Indeed, the claimant herself opted out of her training program at Spa Tech in September, 2018, because she was a serious candidate for full-time employment as a marketing communications manager, with an annual salary of approximately $150,000.00. Based on the claimant's education, experience, and the record before her, the review examiner reasonably inferred that the claimant did not need this training program because there were suitable positions as marketing manager, product manager and writer available to the claimant. While the claimant may have wanted to change her career, that is not the purpose of training benefits.

We, therefore, conclude as a matter of law that the claimant does not meet the requirements of G.L. c. 151A, § 30(c), and 430 CMR 9.00 *et seq*.

The review examiner's decision is affirmed. The claimant is not 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).

BOSTON, MASSACHUSETTS
DATE OF DECISION - June 27, 2019

Paul T. Fitzgerald, Esq.
Chairman

Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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