

**The clock on the 20-week Section 30 application deadline started when the DUA issued its first regular unemployment benefits check to the claimant. Since his Section 30 application was submitted to DUA within 20 weeks of that date, it was timely.**

**Board of Review  
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Member  
Michael J. Albano  
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**Issue ID: 0029 1412 37**

## **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) to deny the claimant an opportunity to be considered for an extension of unemployment benefits while participating in an approved training program. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant filed a claim for unemployment benefits with the DUA, effective August 19, 2018, which was approved. He subsequently filed an application with the DUA for an extension of benefits to attend a training program, which the agency denied on January 31, 2019. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, the review examiner affirmed the agency's determination and denied the extension of benefits in a decision rendered on March 1, 2019. We accepted the claimant's application for review.

The extended benefits were denied after the review examiner determined that the claimant had not met the 20-week application deadline, as required 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, which concluded that the claimant failed to apply for benefits pursuant to G.L. c. 151A, § 30(c) (Section 30 or training benefits) within the statutory deadline, 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. The claimant filed an unemployment insurance claim on 8/20/18, and obtained an effective date of his claim of 8/19/18.

2. The claimant received a DUA Guide to Benefits in the mail after he filed the above claim.
3. The DUA Guide to Benefits contains a page that describes the Section 30/Training Opportunities Program (TOP), including the twentieth compensable week deadline to apply for the program.
4. On 10/11/18, the claimant completed initial RESEA requirements at the Career Center in [Town A].
5. Information about the Section 30/Training Opportunities Program (TOP) and the deadline to apply for the program was provided at the initial RESEA meeting.
6. The claimant is unsure of the date he started researching training/school programs.
7. The first week of the above claim was from 8/19/18 to 8/26/18. The claimant did not receive benefits that week, as that was his “waiting week.”
8. The twenty first week of the above claim ended 1/12/19.
9. The claimant received benefits for the weeks beginning 8/26/18 to 1/12/19.
10. The twentieth compensable week of the above claim ended 1/12/19.
11. The Section 30/TOP application states: “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 20th compensable week of Unemployment Insurance Benefits (which is before the end of the 21st week of your Unemployment Claim), unless you have an acceptable reason for missing this deadline.”
12. The claimant filled out Part A of a Section 30/TOP application on 1/22/19.
13. The claimant plans to attend a CDL training program, from 3/18/19 to 4/26/19.
14. The educational institution that administers the above program filled out Part B of the above application on 1/22/19.
15. The application was mailed to DUA with a postmark date of 1/22/19.
16. The claimant believed he completed the TOP/Section 30 application and mailed it to DUA before the end of the twenty first week of his claim.

## 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 original conclusion is free from error of law. After such review, the Board adopts the review examiner's findings of fact except as follows. As explained in more detail below, we reject the portion of Finding of Fact # 10, which provides that the twentieth compensable week ended on January 12, 2019. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, we disagree with the review examiner's legal conclusion that the claimant missed his statutory application deadline.

The review examiner's decision to deny the claimant's application for the 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 approving training benefits are set forth in 430 CMR 9.00–9.09.

Claimants must apply for training benefits within a proscribed statutory 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. . . .

(Emphasis added.)

The review examiner counted 20 weeks starting with the week ending September 1, 2018, which was the week following the wait week at the beginning of the claim. Thus, she arrived at January 12, 2019, as the claimant's application deadline. *See* Finding of Fact # 10 and Exhibit 2. However, the DUA's regulations instruct that the 20-week statutory deadline applies to *compensable* weeks. *See* 430 CMR 9.01.<sup>1</sup> We have held that the 20-week period does not begin until the DUA actually starts paying the unemployment compensation. *See* Board of Review Decision 0022 2673 94 (Jan. 31, 2018) (not appropriate to start the clock on the Section 30 application period before the DUA begins paying the claimant regular unemployment benefits).

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<sup>1</sup> The current version of 430 CMR 9.01, promulgated on October 2, 2009, still refers to a 15-week application period. On August 10, 2016, the Legislature amended the statute to expand the deadline to 20 weeks.

In the present case, the DUA did not issue its first benefit payment to the claimant until October 5, 2018, which was the week ending October 6, 2018.<sup>2</sup> Since the claimant was not compensated until October, it is not appropriate to start the clock on his Section 30 application period until that point. Twenty weeks starting from the first week in which the claimant was compensated for benefits, the week ending October 6, 2018, is February 16, 2019. Since the claimant submitted his Section 30 benefit application on January 22, 2019, he met the statutory deadline.

We, therefore, conclude that the review examiner's decision to disqualify the claimant from participation in the Section 30 training program on the ground that his application was untimely is not free from error of law.

The review examiner's decision is reversed. The DUA shall accept the claimant's Training Opportunities Program application and determine if he is otherwise eligible for Section 30 benefits.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - May 30, 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](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.

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<sup>2</sup> This payment date appears in the DUA's electronic record-keeping system, UI Online.