

Claimant, who sought training benefits to attend law school, failed to establish she could finish the program within two years, did not submit a complete application since the school declined to complete its part, and did not establish that the program is necessary for her to obtain new employment.

**Board of Review
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Issue ID: 0030 8289 98

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 January 20, 2018, which was ultimately approved by the DUA. On March 10, 2019, the claimant filled out and signed an application to the DUA for an extension of benefits while attending a training program she had begun prior to separation, which the agency received on April 23, 2019. On May 4, 2019, the agency denied her application. 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 June 12, 2019.

Training benefits were denied after the review examiner concluded that the claimant would not be able to complete her program within two years, and, thus, she did not meet the requirements for training benefits pursuant to G.L. c. 151A, § 30(c), and 430 CMR 9.05(2)(c). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we accepted the claimant application for review. 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 because she will not complete her program within two years, 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. Prior to filing for unemployment insurance benefits, the claimant worked as a fulltime sales manager for a retail employer from May 2016 until January 17, 2019. The claimant was laid off from work. The claimant's last physical date of work was in September 2018 due to the claimant being on a leave under FMLA prior to the separation date.
2. On January 20, 2019, the claimant filed an initial claim for unemployment benefits (Exhibit 1).
3. The claimant has been attending full-time school at New England School of Law since August 2018. The claimant is enrolled in the Juris Doctor program. This is a three-year program.
4. The claimant requested for the school to complete a Training Opportunities Program (TOP) Application on behalf of the claimant. The school would not fill out this application as requested.
5. On March 10, 2019, the claimant signed and filled out the TOP application and mailed it to the Department of Unemployment Assistance (hereinafter the Department). The claimant filled out Part C of the Application. On Part C of the Application, the claimant listed the following information (Exhibit 2 Page 5):

| | |
|---|--------------|
| Full-Time/Part-time: | Full-Time |
| Classes starts on: | 08/25/2018 |
| All Classes for the program will be completed on: | May 1, 2021. |
| Number of Credits required to complete the program: | 86 |
| Number of Credits that student still needs to complete the program: | 71 |
| Number of credits student has already completed for the program: | 15 |

6. The claimant will be completing the program in May 2021.
7. On April 16, 2019, the Registrar from the school wrote the following letter to the claimant:

“Enclosed is the form that you submitted from the Massachusetts Division of Employment and Training. I am unable to complete this form because the JD program at New England School of Law does not meet the definition of a “training program” as defined on the form or on the DET website.

As promised, we have sent a letter of enrolment to the DET on your behalf, confirming that you are a student in good standing at NESL. If you have any other questions, please do not hesitate to contact me (Exhibit 2).”

8. The claimant has already obtained a Bachelor’s Degree in Business Marketing. The claimant can get employment with this degree.
9. The claimant decided to enroll in Law School due to the retail industry declining. The claimant did some research online and found studies listing that there will be a shortage in the legal field in about 3–5 years. The claimant does not know where she found this research online.
10. On May 4, 2019, the Department issued a Notice of Disqualification denying the claimant benefits under Section 30 of the Law with for schooling at New England School of Law (Exhibit 3). On the Disqualification, a start date is listed of August 25, 2018 and an end date is listed of May 1, 2021 (Exhibit 3).
11. The claimant appealed the Notice of Disqualification (Exhibit 4).

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.

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 guidelines for implementation of training benefits are set forth in 430 CMR 9.00 *et seq.*¹ These regulations 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. 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 review examiner found that the claimant began a full-time, three-year training program to earn her Juris Doctorate degree from the New England School of Law (NESL) in August 2018, prior to separating from employment on January 17, 2019, and before she filed for unemployment benefits on January 20, 2019. The claimant submitted her TOP application to the DUA on March 10, 2019, indicating that her completion date for the program would be May of 2021.

¹ On September 20, 2019, the regulations implementing G.L. c. 151A, § 30(c), were amended. Our decision today is based upon the regulations in effect when the claimant filed her application for training but references the amended regulations within footnotes.

The review examiner properly affirmed the denial of training benefits because the claimant did not establish that she can complete the program within two years, as required by 430 CMR 9.05(2)(c).² She correctly noted that the completion date for the claimant's program exceeded the two year period from when the claimant filed her TOP application. *See* Board of Review Decision 0017 0815 72 (2/26/16).³

While the review examiner's conclusion focuses specifically on the two-year time limit for completion of the program, we further note that the claimant's application for training benefits fails on other grounds as well. First, the claimant's application for training benefits was incomplete. NESL declined to complete its part of the application and proffered a letter explaining why it declined to do so. The Registrar stated that the JD program at NESL does not meet the definition of a "training program" as defined on the form or on the DET website." *See* Finding of Fact #7, Exhibit 2, p. 7.

The Section 30 statute also requires that further training be "necessary for an unemployed individual" to "realize appropriate employment." G.L. c. 151A, § 30(c).⁴ Here, the review examiner found that the claimant already has a bachelor's degree in business marketing and can obtain new employment with the degree she already has. *See* Finding of Fact # 8. Section 30(c) benefits are conferred to claimants whose training and work experience are inadequate for them to obtain new and suitable employment. Training benefits are not available for people with marketable skills and experience in their field who merely wish to change occupations. The career change, which the claimant initiated months before she lost her job, may be a wise personal decision. However, the claimant has not shown that she needs a law degree to find new employment. *See* Board of Review Decision 0002 4854 12 (May 11, 2015) (claimant who had a bachelor's degree and sought training benefits to obtain a master's degree in law and diplomacy did not need this program to obtain new employment).⁵

Based on the above, we conclude that the claimant will not be able to complete her program within two years, she has not submitted a complete application for training benefits, and she did not establish that she needs this program to obtain new employment in her usual occupation or any other occupation for which she is reasonably fitted.

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.*

² Under the new regulations, this provision is codified at 430 CMR 9.04(2)(c).

³ Board of Review Decision 0017 0815 72 is an unpublished decision, available upon request. For privacy reasons, identifying information is redacted.

⁴ See also 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). Under the new regulations, this provision has been slightly modified: "The general goal of [Section 30] is to allow claimants to acquire new skills or knowledge necessary to obtain appropriate employment, including, but not limited to, enhanced or improved employment."

⁵ Board of Review Decision 0002 4854 12 is an unpublished decision, available upon request. For privacy reasons, identifying information is redacted.

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 - September 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