Claimant's 20-week application deadline to apply for Section 30 benefits began when he received his first unemployment check, which had been delayed until he received an appeal decision from the hearings department. Since his Section 30 application was timely, he has shown that he needs training to find suitable employment, and he is otherwise enrolled in an approved training program, he is entitled to a 26-week extension of his benefits.

Board of Review
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Issue ID: 0031 2855 97

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 December 2, 2018, which was approved following an appeal.[1] He subsequently filed an application with the DUA for an extension of benefits to attend a training program, which the agency denied on June 26, 2019. The claimant appealed this 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 July 23, 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). 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 obtain further evidence regarding when the claimant received his first unemployment payment and other information about his requested training program. The claimant attended the remand hearing. Thereafter, the review examiner issued his consolidated findings of fact. Our decision is based upon our review of the entire record.

[1] We take administrative notice from the DUA's electronic record-keeping system, UI Online, that a hearing decision in Issue ID # 0028 2052 35 reversed a DUA determination and awarded the claimant regular unemployment benefits in a decision rendered on March 6, 2019.

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 consolidated findings of fact and credibility assessment are set forth below in their entirety:

1. On 12/7/2018, the claimant filed a new claim for benefits online which was established with an effective date of 12/2/2018.

2. After filing his unemployment claim online, the claimant does not recall viewing the link listed online for training opportunities.

3. The claimant visited his local career center within a couple days of filing his claim and was informed of the various opportunities through the career center.

4. The claimant does not recall being made aware of the Training Opportunities Program until April when informed by a career counselor that he should attending [sic] training.

5. The claimant was issued his first DUA check on 3/6/2019 which covered the weeks ending 12/22/2018 through 3/2/2019.

6. The claimant's 20th compensable week would be 7/20/2019.

7. The claimant then started the process of selecting a training program, applying for financial aid and obtaining his previous high school transcripts.

8. The claimant does not have any post-high school degrees or certificates.

9. The claimant's most recent job in his base period was a Store Manager for a hardware store which he worked for 1 year.

10. The claimant has over 30 years of experience in various Store Manager positions.

11. On 6/6/2019, the claimant submitted a TOP application to attend Quinsigamond Community College's Associate Business degree program full-time from 7/8/2019 through 5/15/2021.

12. The claimant decided to pursue the program in order to be able to compete with other Store Manager job applicants who have college degrees.

13. The Quinsigamond Community College's Associate Business degree is related to the claimant's prior employment experiences.

14. The claimant needs a total of 60 credits to complete the Quinsigamond Community College's Associate Business degree over the course of 4 semesters.

15. The claimant did not have any prior college credits to transfer into the program.

16. The claimant's application was submitted after certifying for unemployment benefits for the week ending 6/1/2019.

17. The claimant exhausted his unemployment benefits the week ending 6/29/2019 after last certifying for unemployment benefits on 6/30/2019.

18. The Summer [II] 2019 semester began on 7/1/2019 and ended on 8/16/2019 with the claimant earning 6 credits for taking two courses.

19. The Fall 2019 semester began on 9/3/2019 and will be completed on 12/16/2019 with the claimant earning 12 credits for taking 4 courses.

20. The claimant is taking an English course, a math course, an accounting course and a computer course during the Fall 2019 semester.

21. As of 10/22/2019, the claimant had completed 6 credits and needs 54 credits to complete the program.

22. The Spring 2020 semester will begin on 1/6/2020 and end on 5/15/2020 with the claimant taking 12 credits that semester.

23. The Summer [I] 2020 and the Summer [II] 2020 semester dates have not been announced.

24. The claimant plans to take 2 courses for 6 credits during the Summer [I] 2020 semester and 2 courses for 6 credits during the Summer [II] 2020 semester.

25. The Fall 2020 semester begins on 9/8/2020 and will end on 12/18/2020 with the claimant taking 4 courses for 12 credits.

26. The Spring 2021 semester begins on 1/5/2021 and ends on 5/14/2021. The claimant will take 12 or less credits during such semester in order complete the program by 5/14/2021.

27. No additional courses will be required of the claimant after the Spring 2021 semester.

28. The Quinsigamond Community College's Associate Business degree does not require any clinical training.

29. The claimant has not secured any tuition reimbursement to attend the Quinsigamond Community College's Associate Business degree program.

30. A Quinsigamond Community College representative was not available to testify at the Remand Hearing under oath due to being on vacation.

31. Based on a printout from the Massachusetts One-Stop Employment System, the document lists the program as approved for Section 30 from 7/1/2018 through 6/30/2019.

Credibility Assessment:

The claimant's testimony is accepted as credible since he was forthright in giving clear and consistent testimony and his version of the events [sic] logical sense.

Ruling of the Board

In accordance with our statutory obligation, we reviewed 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 original conclusion is free from error of law. After such review, the Board adopts the review examiner's consolidated findings of fact except as follows. We understand Consolidated Finding # 6 to mean that the 20th compensable week is the week "ending" July 20, 2019. Although Consolidated Finding # 31 accurately captures information on the Massachusetts One-Stop Employment System (MOSES) printout entered into evidence as Remand Exhibit 7, we note that information on the MOSES system has been updated and now shows that the claimant's training program has been approved from July 1, 2019, through June 30, 2020. 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. However, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant is ineligible for Section 30 benefits.

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 prescribed 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 disqualified the claimant for missing the statutory 20-week application deadline. In his original decision, he counted 20 weeks starting with the week ending December 22, 2018, which was the week following the wait week at the beginning of the claim. Thus, he arrived at May 4, 2019, as the claimant's application deadline.[2] However, 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).[3]

After remand, the review examiner found that the claimant received his first unemployment check on March 6, 2019, pushing the 20th compensable week to the week ending July 20, 2019. *See* Consolidated Findings ## 5 and 6. Since the claimant submitted his Section 30 (TOP) application on June 6, 2019, we conclude that his application was filed well within the 20-week deadline. *See* Consolidated Finding # 11.

The remainder of the consolidated findings show that the claimant meets the other criteria for Section 30 approval. His requested training program has been approved as a Section 30 training program by the Department of Career Services,[4] he is attending full-time, and he will complete the program within two years. *See* Consolidated Findings ## 14, and 18–27. We also believe there is substantial evidence that the claimant needs this Associate's degree training program to become re-employed. Although the claimant has over 30 years' experience in store management positions, he does not possess a college degree or any post-high school certificates. He has also exhausted all of his regular unemployment benefits without finding full-time work in his field. *See* Consolidated Findings ## 8 and 10. We find merit to the claimant's reasonable belief that an

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[2] *See* Remand Exhibit 1, Finding of Fact # 5 of the original decision, and Remand Exhibit 5, a DUA list of all weeks that the claimant certified for benefits.

[3] On September 20, 2019, the DUA amended its regulations to incorporate this definition of the 20-week deadline. *See* 430 CMR 9.02, wherein the definition for Application Period states, "The 20-week application period commences with the week the first payment is issued to a claimant, and continues for each week payment is issued thereafter . . . ."

[4] *See* Consolidated Finding # 31 and note 1, *supra*.

Associate's degree in Business Administration is necessary for him to be more competitive in that job market. *See* Consolidated Findings ## 12 and 13.

We, therefore, conclude that the review examiner's decision to disqualify the claimant from participation in the Section 30 training program on the grounds his application was untimely is not free from error of law. We further conclude that the claimant meets the other requirements under G.L. c. 151A, § 30(c), to be eligible for an extension of up to 26 weeks of additional benefits.

The review examiner's decision is reversed. The claimant is entitled to an extension of up to 26 weeks of additional benefits pursuant to G.L. c. 151A, § 30(c), if otherwise eligible.



BOSTON, MASSACHUSETTS
DATE OF DECISION – November 12, 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.

AB/rh