

Based upon when DUA issued claimant's first unemployment benefit check, she applied for the Section 30 program within 20 compensable weeks. Also, her training program has recently been approved. Since the claimant had not begun the program because initially, the training benefits had been improperly denied, the claimant is afforded two weeks to re-apply for approval to attend another Section 30 training program.

**Board of Review
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Issue ID: 0031 5503 95

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 reverse.

The claimant became separated from employment and filed a claim for unemployment benefits on January 1, 2019, which was subsequently approved by the DUA. On July 9, 2019, the DUA received an application from the claimant for an extension of benefits to attend a training program, which the agency denied on August 1, 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 November 2, 2019. We accepted the claimant's application for review.

Training benefits were denied after the review examiner concluded that (1) the claimant had not timely submitted her application for training benefits, (2) her program was not approved for training benefits, and (3) the claimant had not begun her program as scheduled; and, thus, the claimant did not meet the requirements for training benefits 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, as well as 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 20th compensable week, her program was not approved for training benefits, and she did not begin the program as scheduled, 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 a claim for unemployment benefits with an effective date of December 30, 2018.
2. In April 2019, the claimant learned of the Training Opportunities program (Section 30).
3. The claimant filed a Section 30 Training Opportunities Application to the Department of Unemployment Assistance which was received on July 9, 2019. The application is for the Cosmetology program at Flavia Leal Beauty Creators Academy. The claimant's classes were scheduled to begin on July 15, 2019 with a completion date of June 27, 2020. The class is scheduled for 25 hours, 5 days a week.
4. The claimant's cousin assisted the claimant with filing the application due to her limitation with English.
5. The claimant's preferred language is Spanish.
6. On August 1, 2019, the Department of Unemployment Assistance (DUA) sent a Notice of Disqualification to the claimant because the TOP application was received beyond the 20th compensable week of her claim without a valid reason.
7. The claimant did not begin the program on July 15, 2019.
8. As of the date of the hearing, the claimant is not enrolled in the program at Flavia Leal Beauty Creators Academy.
9. Flavia Leal Beauty Creators Academy is not registered nor approved for the Section 30 program.

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 for Finding of Fact # 5 (the hearing was conducted in the claimant's preferred language, which is Cape Verdean or Portuguese Creole, not Spanish); and Finding of Fact # 9 (as explained in detail below, the Flavia Leal program has been approved for Section 30 training benefits). In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, we reject the review examiner's legal conclusions that the claimant

failed to timely file her application for training benefits, and that her program has not been approved for training benefits.

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 stated in 430 CMR 9.04.

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; . . . provided, further, that the commissioner, in his discretion, may extend the period once for not more than two weeks for any applicant whose initial application is denied; . . .

The claimant filed an application for training benefits, which was received by the DUA on July 9, 2019. *See* Finding of Fact # 3. The claimant sought to attend a cosmetology training program at Flavia Leal Beauty Creators Academy (Flavia Leal), in Everett, Massachusetts, beginning on July 15, 2019, and ending on June 27, 2020. *See* Finding of Fact # 3 and Exhibit 2.

The claimant's request for training benefits was initially denied by the DUA as untimely filed and because her program was not listed as approved in the Massachusetts One Stop Employment System (MOSES). *See* Exhibit 4. The review examiner affirmed the denial of training benefits for both of these reasons, as well as because the claimant had actually not begun the program as scheduled on July 15, 2019. *See* Finding of Fact # 7. The review examiner's conclusions regarding the timeliness of the application and the program's approval are incorrect, 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). This directive was codified on September 20, 2019, when amendments were made to the regulations governing training benefits. The new regulations specifically define the “Application Period” as set forth in 430 CMR 9.02, as follows:

The application period is a period of time within which an individual may apply for training and benefits 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 unless the period is tolled by regulation or waived for good cause

Applying the proper standard to this case, we take administrative notice from information contained in the DUA’s electronic record-keeping system, UI Online, that the DUA issued the claimant her first check for benefits on February 28, 2019. The claimant was disqualified for the week ending March 23, 2019, which does not count as a compensable week for the purposes of determining timeliness under G.L. c. 151A, § 30(c).¹

Therefore, the claimant’s 20th compensable week was the week ending July 20, 2019. The claimant mailed her application for training benefits with a postmark of July 5, 2019, which the DUA received on July 9th. *See* Finding of Fact # 3 and Exhibit 2g. Thus, we conclude, as a matter of law, that her application was timely filed.

Both the adjudicator and the review examiner concluded that the claimant’s chosen program was not listed in the DUA’s MOSES and JobQuest databases as approved for training benefits. *See* Finding of Fact # 9. While this may or may not have been true at the time of the initial adjudication and hearing, our review of the DUA’s JobQuest database shows a cosmetology program at Flavia Leal in Everett listed as approved for training benefits.² We, therefore, conclude as a matter of law that the claimant’s chosen program was approved for training benefits.

The claimant chose not to commence training as scheduled on July 15, 2019, because she had been incorrectly found ineligible for training benefits. Under these circumstances, we cannot simply restore training benefits for the claimant to retroactively attend her chosen program. But the statute and its applicable regulations provide the claimant with an opportunity to re-apply for training benefits within two weeks of the Board’s decision.³ *See* 430 CMR 9.05(6)(b).

¹ The weeks when a claimant declines or does not certify for benefits are not counted when calculating compensable weeks for the purposes of determining timeliness for Section 30 benefits. *See* Board of Review Decision 0031 6210 08 (Oct. 30, 2019). Here, the claimant certified for, but was not paid, regular unemployment benefits for the week at issue.

² *See* <https://jobquest.dcs.eol.mass.gov/jobquest/TrainingDetails.aspx?ti=1120559>.

³ We note that the review examiner here found that the claimant did not begin the training program on July 15, 2019. *See* Finding of Fact # 7. If the claimant wishes to pursue regular unemployment benefits as of July 14, 2019, she should submit an appeal of that determination.

The review examiner's decision is reversed with regard to the timeliness of the claimant's application and the approval of her chosen program.

Pursuant to G.L. c. 151A, § 30(c), and 430 CMR 9.05(6)(b), the claimant is eligible to re-apply for training benefits. The claimant has two weeks from the date of this decision to submit a new application for training benefits to attend an approved program.

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 17, 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