

**Claimant who declined or did not certify for benefits during weeks when she had begun part-time benefit year employment should not have had those weeks counted as “compensable weeks” for the purposes of determining timeliness of her application for training benefits, so claimant’s application for training benefits was timely filed.**

**Board of Review  
19 Staniford St., 4<sup>th</sup> Floor  
Boston, MA 02114  
Phone: 617-626-6400  
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.  
Chairman  
Charlene A. Stawicki, Esq.  
Member  
Michael J. Albano  
Member**

**Issue ID: 0031 6210 08**

## **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 December 10, 2018, which was subsequently approved by the DUA. On July 16, 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 17, 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 September 20, 2019. We accepted the claimant’s application for review.

Training benefits were denied after the review examiner concluded that the claimant had not timely submitted her application for training benefits and, thus, did not meet the requirements pursuant to 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 accepted the case for review. Our decision is based upon our review of the entire record, including 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 20<sup>th</sup> compensable week, 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 12/10/18, and obtained an effective date of her claim of 12/9/18.
2. The claimant received the DUA Guide to Benefits after she filed the above claim.
3. The DUA Guide to Benefits contains information about the Training Opportunities Program (TOP)/Section 30, including information about the 20th compensable week deadline.
4. Massachusetts General Laws, Chapter 151A, Section 1(e) defines "Compensable week" as "... a week for which a worker is entitled to benefits for unemployment."
5. The claimant received benefits for the five weeks beginning 12/16/18 to 1/19/19, and for the thirteen weeks beginning 2/10/19 to 5/11/19.
6. The claimant declined benefits for the two weeks beginning 5/12/19 to 6/8/19.
7. The claimant did not request benefits for the week beginning 6/9/19 to 6/15/19.
8. The claimant received benefits for the two weeks beginning 6/16/19 to 6/29/19.
9. The claimant started researching training programs in late March 2019.
10. The claimant believed the twentieth compensable week of her claim ended 6/29/19.
11. The claimant applied for admission to a Practical Nurse Education program at educational institution "LT" and was accepted in April 2019. The program had a start date of 5/28/19.
12. The claimant declined the offer to attend the program at "LT" because when she visited her local Career Center, she learned there was no WIOA funding available until 7/1/19.
13. On 4/12/19, the claimant e-mailed educational institution "UCC" and expressed interest applying for the Practical Nurse Education program. She attached a copy of a testing accommodation from her primary care physician.
14. The Admissions Administrative Assistant replied to the claimant's e-mail on 4/12/19, and asked the claimant to fill out a request for accommodation.

15. The Administrative Assistant said once the Director of Admission reviewed the request, "UCC" would contact the claimant to schedule a date to take an examination.
16. The claimant replied on 4/16/19, and said she did not register online, because she wanted to confirm accommodation prior. She attached an accommodation request, and asked if she needed to complete another application.
17. On 5/20/19, the Administrative Assistant sent the claimant an e-mail confirming the claimant's request to take the TEAS examination, and informed the claimant the next test date was on 5/22/19, at 11 a.m.
18. On 6/4/19, the claimant submitted her Practical Nurse Education program application to "UCC".
19. On 6/18/19, the claimant interviewed with "UCC's" Director the Division of Nurse Education.
20. On 6/24/19, the Director of Education sent the claimant a letter stating she was conditionally accepted into the above program, and acceptance was not final until receipt of all required documents, including: CPR certification; and/or tuberculosis screening.
21. The letter also stated that the claimant was required to receive the influenza vaccine, and to provide a \$1,000 tuition deposit.
22. The start date of "UCC's" Practical Nurse Education program is 8/28/19. The end date of the program is 6/24/20.
23. On 6/28/19, the claimant sent a TOP/Section 30 application to "UCC" to complete on her behalf.
24. On 7/9/19, the claimant e-mailed the Director of the Division of Nurse Education regarding the TOP/Section 30 application.
25. The claimant received an automated reply, as the Director of the Division of Nurse Education was out of the office at that time.
26. The claimant filled out Part A of a TOP/Section 30 application on 7/10/19, and sent the application to "UCC" to complete on her behalf.
27. The above application was comprised of pages one, two, five and six, of a six-page application, and pages three and four of a seven-page application.
28. "UCC" filled out pages three and four of the seven-page application, and sent the application to DUA. DUA received the application on 7/16/19.

29. On 8/2/19, DUA sent the claimant additional Fact Finding questions regarding the above application, as the application was comprised of two separate applications, and not filled out completely.

30. “UCC” sent DUA a completed TOP/Section 30 application on 8/12/19.

### 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. However, as discussed more fully below, we reject the review examiner’s legal conclusion that the claimant failed to timely file her application 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 enumerated 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 . . . .

The claimant initially sent an application for training benefits which was received by the DUA on July 16, 2019. *See* Finding of Fact # 28. The claimant sought to attend a practical nurse education training program at Upper Cape Cod Regional Technical School (UCC), with Training

PRO/MOSES Course ID # 1000564, beginning on August 28, 2019, and ending on June 24, 2019. *See Exhibit # 2.*

On August 2, 2019, the DUA sent a questionnaire to the claimant, advising her that her application had not been completed adequately, and asking her to submit a new application. *See Finding of Fact # 29 and Exhibit # 3.* The claimant submitted a second application for training benefits to the DUA on August 12, 2019. *See Finding of Fact # 30.* The claimant's second application sought benefits to attend the same practical nurse education training program at UCC, beginning on August 28, 2019, and ending on June 24, 2019. *See Exhibit # 4.*

The review examiner found that the claimant believed her 20<sup>th</sup> compensable week was the week ending June 29, 2019. *See Finding of Fact # 10.* The claimant's request for training benefits was initially denied by the DUA as untimely filed. *See Exhibit # 7.* The review examiner affirmed the denial of training benefits as untimely filed without issuing a finding as to when the claimant's 20<sup>th</sup> compensable week actually was, evidently relying on the claimant's [mistaken] belief that her 20<sup>th</sup> week was the week ending June 29, 2019. The review examiner's conclusion was 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 the first unemployment check on their claim. *See Board of Review Decision 0022 2673 94 (Jan. 31, 2018).*<sup>1</sup>

Applying the proper standard to this case, we take administrative notice that the DUA issued the claimant her first check for benefits on March 2, 2019. As the review examiner noted, the claimant declined benefits for the weeks ending May 18 and June 8, 2019. *See Finding of Fact # 6.* The claimant did not certify for benefits for the week ending May 25, June 1, and June 15, 2019. *See Finding of Fact # 7 and Exhibit # 1.* The weeks when the claimant declined or did not certify for benefits are not counted when calculating compensable weeks for the purposes of determining timeliness under G.L. c. 151A, § 30(c).<sup>2</sup>

Therefore, the claimant's 20<sup>th</sup> compensable week was the week ending August 17, 2019. The DUA received her initial application for training benefits on July 16, 2019. The claimant's second application for training benefits, which merely perfected the application she sent initially, was transmitted to the DUA on August 12, 2019, and would have been timely as well. Thus, we conclude, as a matter of law, that her application was timely filed.

The claimant's chosen program at UCC is listed as approved in MOSES. *See Exhibit # 5.* We, therefore, conclude as a matter of law that the claimant is eligible for training benefits pursuant to G.L. c. 151A, § 30(c), and 430 CMR 9.00 *et seq.*

---

<sup>1</sup> This interpretation has been adopted in the DUA's new Section 30 regulations at 430 CMR 9.02, effective September 30, 2019.

<sup>2</sup> We note the claimant has made no effort to retroactively certify for benefits for these weeks, in an effort to reclaim the benefits later.

The review examiner's decision is reversed. The claimant is entitled to receive an extension of up to 26 times her weekly benefit rate while attending her training program, from August 28, 2019, through June 24, 2020, if otherwise eligible.<sup>3</sup>

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - October 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.

JPC/rh

---

<sup>3</sup> There was no inquiry at the hearing, which was convened on September 11, 2019, into whether the claimant had actually begun her training program as anticipated on August 28, 2019. In order to qualify for training benefits, a claimant must be attending the program for which they are seeking benefits. In order to expedite the disposition of this case, we will create a new issue to be investigated to determine whether the claimant is attending her program as anticipated, rather than remand this case back to the review examiner for a finding on this question.