Claimant is enrolled in a Section 30-approved addiction counselor education certificate training program. Because the program's combination of classroom and practicum hours meets the definition of a full-time training program under 430 CMR 9.04(2)(b), the claimant is eligible for Section 30 benefits.

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Issue ID: 0031 8095 38

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. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant separated from employment, filed an unemployment claim, effective April 7, 2019, and was approved for benefits. She subsequently filed an application with the DUA for an extension of benefits while attending a training program, which the agency originally approved. However, in a Notice issued on September 13, 2019, the DUA disqualified the claimant from receiving the extension of benefits. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by the claimant, the review examiner affirmed the agency's determination in a decision rendered on November 6, 2019. We accepted the claimant's application for review.

The review examiner determined that the claimant was not enrolled in a full-time training program and, thus, she was not eligible for extended benefits under G.L. c. 151A, § 30(c) (Section 30 or training benefits). 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's addiction counselor certification training program is not full-time within the meaning of G.L. c. 151A, § 30(c), is supported by substantial and credible evidence and is free from error of law, even though the program includes a practicum component on top of the weekly classroom hours.

Findings of Fact

The review examiner's findings of fact are set forth below in their entirety:

1. The claimant established an initial claim for benefits with an effective date of 4/7/19.

2. On 7/3/19, the claimant [sic] a Training Opportunities Program (TOP) application, seeking benefits while in attendance at an addiction counselor education program at Westfield State University. The application indicated that the claimant would spend 23 hours per week in class and would earn 12 continuing education units during the fall term of 9/7/19 through 12/14/19, and 12 continuing education units during the spring term of 1/4/20 until 5/9/20. The claimant's application was approved.

3. The claimant attends three classes that meet for two hours each on Saturday. The claimant spends 6 hours per week in classroom training.

4. On 9/13/19, the DUA issued the claimant a Notice of Disqualification, revoking her approval for benefits under Section 30 because her program is part-time.

5. On 9/16/19, the claimant appealed the Notice of Disqualification.

6. On 10/8/19, a Community Education Coordinator at Westfield State University generated a letter on the claimant's behalf. The letter reads in relevant part: "Due to the nontraditional nature of the program, the number of hours required of students for the program may vary on a week-to-week basis. At minimum, the program requires 7 hours of classroom time and 6 hours of estimated homework time on a weekly basis. When calculating the estimated weekly hours for the entire program, the 300 hour practicum placement is averaged over the course of the full 28 weeks resulting in an average of 23 hours per week over the course of the program…" Since it is a non-credit program, the ACE program instead awards CEUs (Continuing Education Units) for academic credits. CEUs are equivalent to 10 contact hours per 1 CEU and are utilized for the purpose of state certification and licensure…"

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 ultimate 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 disagree with the review examiner's legal conclusion that the claimant is ineligible for Section 30 benefits.

At issue in this case is whether the claimant qualifies for benefits under G.L. c. 151A, § 30(c), which 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 by up to 26 times the individual's benefit rate, if such individual is attending an industrial or vocational retraining course approved by the commissioner; . . . .

The DUA has promulgated regulations, which set forth criteria that a training course must meet in order for a claimant to be approved for Section 30 benefits. This includes 430 CMR 9.04(2)[1], which provides, in pertinent part, as follows:

> Training providers, and in particular, the training they offer must meet the following measurable standards: . . . (b) Be a full-time course, providing a minimum of at least 20 hours of supervised classroom training per week; provided, however, that: (1) if the program is offered by a community college, college, or university, this requirement shall be met if the program provides a minimum of 12 credits each semester or the equivalent; (2) if the program is offered as part practicum or internship and part classroom hours, the program will be approved only for the time needed to complete state or federal certification or licensing requirements, or the time deemed necessary by the Director to allow the claimant to become employable in the occupation for which the training has been provided; . . . .

The review examiner concluded that the claimant's addiction counselor education program does not meet the regulation's definition of a full-time course, because the claimant's supervised classroom training is limited to six hours per week. Because the program's practicum component brings it within the exceptions set forth under 430 CMR 9.04(2)(b), we disagree.

In a prior Board decision, Board of Review Decision BR-106513 (May 5, 2008), a claimant sought Section 30 approval for a training program under similar circumstances. In that case, a community college training program required 79.5 hours of classroom instruction over 15 weeks, as well as three weeks of clinical placement at 40 hours per week (120 hours). We concluded that the training program satisfied the regulation's criterion that it provide a minimum of 12 credits each semester or the equivalent, because, over the 15-week period, the program averaged 13.3 hours per week. *See also* Board of Review Decision 0014 0406 76 (Mar. 4, 2015) (120-hour field work placement in the spring 2015 semester, combined with her nine course credit hours that semester and the additional six course credits that she is projected to earn in the summer, meets the full-time requirement contemplated by 430 CMR 9.05).

Our decision in these cases citied Figueroa v. Dir. of Department of Labor and Workforce Development, 54 Mass. App. Ct. 64 (2002) (community college student enrolled in only nine classroom credit hours was entitled to Section 30 benefits, given the additional requirement to spend 20-30 hours per week in a computer lab). The Appeals Court held that the training program satisfied the, then, newly amended DUA regulation at 430 CMR 9.05(2)(b)(1), which

[1] We have cited to the current version of the regulations, which became effective on September 20, 2019. In all relevant respects, the cited regulation is substantively the same as 430 CMR 9.05(2), which was in effect at the time the claimant submitted her Section 30 application.

allowed the program to provide a minimum of 12 credits each semester *or the equivalent.* Id. at 69–70. The court observed that the amendment was enacted to provide "elasticity" to the regulation's previous fixed and rigid eligibility criteria, because "many college and university programs likely to assist people seeking new skills could not be identified simply by looking at the number of credit hours those programs produced." Id. at 71–72.

Here, the claimant's 28-week training program is offered by a university. *See* Findings of Fact ## 2 and 6. It includes a 300-hour practicum. Although the claimant will not receive academic credits in this training program, we believe the averaging principle is equally appropriate. The 300-hour practicum averaged over those 28 weeks equals 10.7 hours per week. Adding the 7 hours of classroom hours, this amounts to an average of 17.7 hours per week. *See* Finding of Fact # 6.[2] If this were a credit-hour program, it would fall squarely within the requirement of 12 credit hours or the equivalent.

Since the addiction counselor education program is a certificate program[3] that does not award credit hours, we consider whether it meets the further exception to the 20 hours of supervised classroom training per week set forth under 430 CMR 9.04(2)(b)(2).

Finding of Fact # 6 quotes a portion of a letter from the Community Education Coordinator at Westfield State. The Coordinator also wrote that this training program has been approved by the Massachusetts Department of Public Health, Bureau of Substance Abuse Services, awarding 55 Continuing Education Units (CEUs), which are utilized for state certification and licensure. *See* Finding of Fact # 6. [4] It is unclear whether this program qualifies the graduate to obtain state certification or licensure, or whether additional training is necessary.[5] Nonetheless, we see no reason to remand the case for further evidence.

That is because agency records show that the Department of Career Services (DCS) has approved the training program for participation in the Section 30 program from July 1, 2019 – June 30, 2020. *See* Exhibit 3. The claimant is enrolled during this period. *See* Finding of Fact # 2. DCS describes the program as a "[o]ne year certificate program to prepare students for a career in treatment services for alcohol/chemical dependency." *See* Exhibit 3. Thus, it is apparent that the training program's combination of classroom and practicum hours has been "deemed necessary by the Director to allow the claimant to become employable in the occupation for which the training has been provided." 430 CMR 9.04(2)(b)(2).

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[2] According to the university's Community Education Coordinator, the program has additional hour requirements to perform site visits to AA/NA meetings, speaker events, and a 16-hour pre-practicum class held in January, which are not included in this calculation. *See* Exhibit 6. Although not incorporated into the review examiner's findings, this statement is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. *See* Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

[3] *See* Exhibit 3, a Massachusetts One Stop Employment System (MOSES) screen, which refers to the program as a one-year certificate program. This exhibit is also part of the unchallenged evidence in the record.

[4] The full text of this letter is found in Exhibit 6.

[5] The course description under the Massachusetts Department of Career Services Jobquest course details listing for the Addiction Counselor Education Certificate, Course ID 1005403, states, "All classroom and practicum hours can be applied to CAC,CACDC certification and State Licensure (LADC) for students who wish to pursue certification and/or licensing." *See* http://jobquest.dcs.eol.mass.gov/jobquest/TrainingDetails.aspx?ti=1005403.

We, therefore, conclude as a matter of law that the claimant meets the eligibility requirement of G.L. c. 151A, § 30(c), because she is enrolled in an approved Section 30 training program, which contains a combination of classroom and practicum hours that satisfies the full-time training requirement under 430 CMR 9.04(2)(b).

The review examiner's decision is reversed. Pursuant to G.L. c. 151A, § 30(c), the claimant is entitled to receive an extension of up to 26 times her weekly benefit rate while attending this training program if otherwise eligible.



BOSTON, MASSACHUSETTS
DATE OF DECISION - January 23, 2020

Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

Member Charlene A. Stawicki, 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