

Claimant, who would not complete her training program within two years, did not qualify for training benefits under G.L. c. 151A, § 30(c). Where she would not accept full-time work while she was attending school on a full-time basis, she was also ineligible for regular benefits under § 24(b), because she was not available for and actively seeking full time employment.

**Board of Review
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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 both regular unemployment benefits and an extension of the unemployment benefits while the claimant attended a training program (training benefits). We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

The claimant was separated from employment and filed a claim for unemployment benefits with the DUA on June 25, 2019, which was ultimately approved. The claimant subsequently applied for the training benefits on July 26, 2019. On August 14, 2019, her application for training benefits was approved through December 20, 2019, after which time she was instructed to submit a new application for training benefits upon completion of the fall 2019 semester.

On April 13, 2020, the claimant reopened her claim, effective April 5, 2020. On May 7, 2020, the agency issued a determination denying benefits. The claimant appealed the 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 both regular and training benefits in a decision rendered on September 19, 2020. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was ineligible for training benefits because she would not complete her training program within two years, as required by G.L. c. 151A, § 30(c), and she was ineligible for regular unemployment benefits, because she was not available for and actively seeking full-time work while attending school on a full-time basis, as required by G.L. c. 151A, § 24(b). 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 take additional evidence. The claimant attended the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact. Our decision is based upon our review of the entire record.

The issues before the Board are whether the review examiner's decision, which concluded that the claimant is ineligible for training benefits because she will not complete the program within two years, and that the claimant is ineligible for regular unemployment benefits because she is not

available for and actively seeking full-time employment while attending school full-time, are supported by substantial and credible evidence and are free from error of law.

Findings of Fact

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

1. On an unknown date, the claimant applied to and was accepted to attend the University of Massachusetts Boston (the School) Bachelor of Science in Biology full time.
2. In September, 2018, the claimant began attending the School full time.
3. From 2017 until June, 2019, the claimant worked part time, 20 to 25 hours a week as a sales associate while attending school full time.
4. The claimant began working part-time as a personal care attendant on November 5, 2018.
5. The claimant filed a claim for unemployment benefits effective June 16, 2019. The claimant's benefits year end date (BYE) was June 13, 2020.
6. At the time the claimant filed her unemployment claim, she was permanently separated from employment.
7. The claimant expects to receive a bachelor's degree of science in biology from the School upon completion in spring 2022.
8. On an unknown date, the claimant visited a MassHire Center and was given a Training Opportunities Program (TOP) Application by a MassHire Center employee for completion and submission to the Department of Unemployment Assistance (DUA).
9. On July 26, 2019, the School's Records Specialist in the Office of the Registrar completed a TOP Application (the Application 1) for the claimant and provided it to the claimant for submission to the DUA.
10. On July 26, 2019, the claimant filed the Application 1 in person with the DUA.
11. The Application 1 indicated the claimant would begin the next semester on September 3, 2019, with an expected completed date of August 21, 2021. The Application 1 indicated she attended Semester I from September 3, 2019, through December 20, 2019.
12. The claimant was scheduled to attend spring 2020, from January 27, 2020, through May 20, 2020, full time, 16 credits; summer 1 2020 from June 1, 2020, through July 14, 2020, and summer 2 2020, from July 15, 2020, through August

- 23, 2020, full time, 14 credits; fall 2020, from September 8, 2020, through December 20, 2020, full time, 16 credits; spring 2021, from January 25, 2021, through May 20, 2021, full time, 16 credits; and summer 1 2021, from June 1, 2021, through July 14, 2021, and summer 2 2021 from July 15, 2021, through August 22, 2021, full time, 12 credits.
13. On August 14, 2019, the DUA approved the claimant to receive up to 26 weeks of extended UI benefits. The approval stated, "You are in attendance at a full-time program and your application for school or training approval was approved pursuant to the above cited section of the Law. You are eligible to receive up to 26 weeks times your weekly benefit rate in additional benefits while attending the full-time program. In addition, you have been granted a waiver of the work search requirements." The approval also stated, "In order to pursue further eligibility beyond 12/20/2019, a new application must be submitted upon completion of the fall 2019 semester."
 14. On October 2, 2019, the claimant began working part-time.
 15. The claimant stopped collecting unemployment benefits when she began working part-time.
 16. The claimant did not submit a new application upon completion of the fall 2019 semester because she was not collecting unemployment benefits at the completion of the fall 2019 semester.
 17. During the week ending December 21, 2019, the claimant was not available for full time work because she was attending school full time.
 18. The claimant was on school break from December 22, 2019, through January 26, 2020.
 19. The claimant believed she was able to work full time from December 22, 2019, through January 25, 2020, because she was on school break.
 20. If the claimant obtained full time employment between December 22, 2019, and January 25, 2020, she would have requested a reduction in her full-time schedule to part-time while attending school full time.
 21. From January 26, 2020, through the hearing date (October 21, 2020), the claimant was not available for full time employment while attending school full time.
 22. Beginning January 26, 2020, the claimant was available to work part-time, after 4 p.m. or 5 p.m., Monday through Friday and on weekends.
 23. If offered full time employment after January 26, 2020, the claimant would have requested part-time employment and would not have sacrificed her full-time

school schedule because she had 35 credits remaining to complete her schooling.

24. On February 5, 2020, the claimant applied for 2 positions. If offered full time employment, the claimant would not have been available for full time employment and she would have requested a part-time or per diem schedule.
25. In April, 2020, the claimant's work schedule changed to on-call employment due to the COVID-19 pandemic.
26. On April 13, 2020, the claimant re-opened her claim effective for April 5, 2020.
27. When the claimant re-opened her unemployment claim, she decided to request an extension of her Section 30 benefits approval.
28. The claimant was not aware in April, 2020, that she could request a TOP application online.
29. At the time the claimant re-opened her unemployment claim, she called the DUA to speak with a representative to request a TOP application. On her first attempt, the claimant was unable to speak with a representative because the call centers were closed for incoming calls due to the COVID-19 pandemic.
30. On an unknown date, the claimant called the DUA a second time. The second time the claimant called the DUA call center, she spoke with a representative who did not tell the claimant the application was available online.
31. On April 26, 2020, the claimant submitted an "Unofficial" transcript to the DUA.
32. On April 28, 2020, a DUA representative sent the claimant a "Custom: New Application" questionnaire (the Questionnaire) for completion. The Questionnaire stated, "You were approved for the Training Opportunities Program (Section 30) while in attendance in the University of Massachusetts, Boston - Biology (Bachelor of Science) program. Additional information is needed. Question 1: Please submit a new application for the Training Opportunities Program (Section 30)."
33. On April 28, 2020, the claimant responded to the Questionnaire stating, "An unofficial transcript has been submitted confirming that I am still attending UMass Boston (remotely due to the pandemic), and I will also attend the university in the Fall 2020 semester."
34. On May 7, 2020, the DUA issued the claimant a Notice of Disqualification (Notice) denying her TOP application because "You failed to submit a new application for the Training Opportunities Program (Section 30) as requested."

35. On an unknown date, the claimant spoke with a DUA call center representative who informed the claimant she could request the TOP application through the UI Online portal.
36. On May 14, 2020, the School's Records Specialist in the Office of the Registrar completed a second TOP Application (the Application 2) for the claimant's extension and submitted it to the DUA.
37. The Application 2 indicated the claimant began school on January 27, 2020, with an expected completion date of May 31, 2022.
38. The Application 2 indicated the claimant attended spring 2020, from January 27, 2020, through May 22, 2020, full time, 16 credits; summer 1 2020, from May 26, 2020, through August 20, 2020, 10 credits; fall 2020, from September 8, 2020, through December 21, 2020, full time, 12 credits; spring 2021, from January 25, 2021, through May 19, 2021, full time, 12 credits; fall 2021, from September 7, 2021, through December 20, 2021, full time, 12 credits; and spring 2022, from January 24, 2022, through May 19, 2022, full time, 12 credits.
39. During the week ending February 1, 2020, and subsequent weeks, the claimant was not available for full time work while attending school.
40. During the week ending February 1, 2020, and subsequent weeks, the claimant would not have accepted full-time employment if offered full-time employment.
41. On August 2, 2020, the claimant submitted 10 applications with an employer. If offered full-time employment, she would have requested a part-time or per diem schedule. She would not have accepted full time employment because she was in school full time.
42. On August 12, 2020, the claimant submitted one application with an employer. If offered full-time employment, she would have requested a part-time or per diem schedule. She would not have accepted full time employment because she was in school full time.
43. On September 10, 2020, the claimant submitted two applications with an employer. If offered full-time employment, she would have requested a part-time or per diem schedule. She would not have accepted full time employment because she was in school full time.

Ruling of the Board

In accordance with our statutory obligation, we review 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 conclusion is free from error of law.

Upon such review, the Board adopts the review examiner's consolidated findings of fact and deems them to be supported by substantial and credible evidence. We further believe that the review examiner's consolidated findings support the conclusions that the claimant is ineligible for training benefits, as well as regular unemployment benefits, during the period at issue.

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 retraining 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 training benefits.

Based on the consolidated findings, we agree with the review examiner's initial conclusion that the claimant is ineligible for training benefits. One requirement for a claimant to qualify for training benefits is that she must complete her program within two years. *See* 430 CMR 9.04(2)(c). The claimant was initially approved for training benefits to commence with the semester beginning September of 2019. *See* Consolidated Finding # 13. Thus, in order to meet this two-year requirement, the claimant would have to finish her training program by August of 2021. However, the claimant's training provider indicated that she would not complete her training program until May 31, 2022. *See* Consolidated Finding # 37. We, therefore, conclude as a matter of law that the claimant's participation in her training program does not meet the requirements for training benefits under G.L. c. 151A, § 30(c).

If the claimant were eligible for training benefits, she would also be relieved of the requirements to be available for and actively seeking full-time employment while attending her full-time training program. *See* 430 CMR 9.06(2). But where the claimant is in a full-time training program and is ineligible for training benefits, she must meet the requirements of G.L. c. 151A, § 24(b), which provide, in pertinent part, as follows:

[An individual, in order to be eligible for benefits under this chapter, shall] . . . (b)
Be capable of, available, and actively seeking work in his usual occupation or any
other occupation for which he is reasonably fitted

The unemployment statute reflects the Legislature's expectation that an unemployed worker will only be eligible for benefits if she is unable to obtain full-time work.¹ Although the review examiner initially concluded that the claimant failed to meet the requirements of G.L. c. 151A, § 24(b), we remanded the case to take further testimony and evidence regarding the claimant's availability for full-time work, as well as her work search activities. After remand, we agree with the review examiner's initial conclusion that the claimant did not meet these requirements.

After remand, the review examiner found that the claimant has not been available for full-time work, from January 26, 2020, through the date of the remand hearing (October 21, 2020). *See* Consolidated Findings ## 21 and 39. Moreover, if the claimant had been offered full-time employment, she would have requested a part-time or per diem schedule, to accommodate her

¹ *See* G.L. c. 151A, §§ 1(r) and 29(a) and (b). The DUA has promulgated regulations, which allow claimants to be available for part-time work under certain circumstances, none of which are applicable here. *See* 430 CMR 4.45.

school schedule. *See* Findings ## 20, 23–24, and 41–43. The claimant would not have sacrificed her full-time training program for full-time employment. *See* Finding # 23. Consequently, she is not available for full-time work. We, therefore, conclude as a matter of law that the claimant does not meet the availability and work search requirements of G.L. c. 151A, § 24(b).

The review examiner's decision is affirmed. The claimant is ineligible for training benefits as of January 26, 2020. The claimant is also ineligible for regular unemployment benefits from the week ending December 21, 2019, until she meets the requirements of the law.

N.B.: Where the claimant opened a new claim for benefits on June 23, 2020, she may also submit a new application for training benefits on the claim she filed on that date, if she intends to complete her training sooner. If she wishes to pursue that option, it might be useful to submit a recent transcript with her application for training benefits.



BOSTON, MASSACHUSETTS

DATE OF DECISION - November 24, 2020

Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano did not participate in this decision.

If this decision disqualifies the claimant from receiving regular unemployment benefits, the claimant may be eligible to apply for Pandemic Unemployment Benefits (PUA). The claimant may contact the PUA call center at (877) 626-6800 and ask to speak to a Tier 2 PUA Supervisor.

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS
STATE DISTRICT 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.