

Claimant is eligible for training benefits where Board review of JobQuest and MOSES showed the program was approved for Section 30 benefits after the claimant began training. Pursuant to 430 CMR 9.05(4), the claimant is eligible for training benefits and a work search waiver as of the date her program became approved.

**Board of Review
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Issue ID: 0032 2245 11

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. We affirm in part and reverse in part, as set forth below.

The claimant became separated from employment and filed a claim for unemployment benefits on August 26, 2019, which was subsequently approved by the DUA. On September 19, 2019, the claimant submitted an application for an extension of benefits to attend a training program, which the agency denied on October 18, 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 22, 2019.

Training benefits were denied after the review examiner concluded that the claimant's program was not approved for training benefits, and, thus, she did not meet the requirements for training benefits 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, as well as information available to us through the DUA's electronic record-keeping system, UI Online, as well as the JobQuest, and the Massachusetts One-Stop Employment System (MOSES) computer databases.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant was ineligible for extended benefits because her program was not approved for training benefits, 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 2019-01 claim for unemployment insurance benefits. The effective date of the claim is 8/25/19.
2. The claimant worked for a restaurant from 2009 to 7/31/19. The claimant worked as a fulltime assistant manager for the restaurant. The claimant has not had any employment since 7/31/19.
3. The claimant began a program at Northern Essex Community College on 9/16/19. The program is the Accounting and Bookkeeping Non-Credit Certification Program.
4. The claimant chose the Accounting and Bookkeeping Non-Credit Certification Program because she wants to gain skills to advance her management career.
5. The claimant's classes for the Accounting and Bookkeeping Non-Credit Certification Program happen on Mondays, Tuesdays, Wednesdays, and Thursdays. The classes on each day run from 9:00 a.m. to 2:30 p.m. The claimant also has a few hours of homework per week.
6. Northern Essex Community College filled out a Training Opportunities Program (TOP) application for the claimant. The application indicates that it is for the Accounting and Bookkeeping Non-Credit Certification Program. The application indicates that the program is full-time for twenty hours per week on four days per week and that the program runs from 9/12/19 to 2/28/20. The application features a section for "Training Pro/MOSES ID#." Northern Essex Community College did not provide this information in the application.
7. The DUA determined that the claimant is not eligible to participate in TOP while she attends the Accounting and Bookkeeping Non-Credit Certification Program at Northern Essex Community College. The DUA sent a disqualification notice to the claimant. The notice is dated 10/18/19.
8. Northern Essex Community College has not gained TOP approval for its Accounting and Bookkeeping Non-Credit Certification Program for the period 9/16/19 through 2/28/19 [sic].
9. When the claimant started the Accounting and Bookkeeping Non-Credit Certification Program, she did not know that the program did not have TOP approval. The claimant inquired with the college. The college told the claimant that the program was not approved and that it would submit an application for approval. The claimant learned that the college's application was denied. The college told the claimant that it would submit its application again.

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. After such review, the Board adopts the review examiner's findings of fact except for Finding # 8, which is inconsistent with our review of current records that show her program has been approved, as explained in more detail below. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. Consequently, we reject the review examiner's legal conclusion that the claimant's 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 enumerated in 430 CMR 9.04.

One requirement that training programs must meet is to demonstrate that trainees will likely be able to quickly find employment in their new chosen field after completing the program. 430 CMR 9.04(2) states, in relevant part, as follows:

Training providers, and in particular, the training they offer must meet the following measurable standards: (a) Have achieved . . . an average placement rate in full time or part time (20 hours per week or more) training related employment of 70% during the most recent 12 month period for which such data is available

The claimant filed an application for training benefits on September 19, 2019, seeking to attend an Accounting and Bookkeeping Non-Credit Certificate program at Northern Essex Community College (NECC) in Lawrence, Massachusetts. The claimant began the program on or about September 16, 2019, and plans to complete the program on February 28, 2020. *See* Findings of Fact ## 3 and 6, and Exhibit 1.

The claimant's application for training benefits was initially denied because at the time she applied for these benefits on September 19, 2019, her chosen program was not listed as approved for training in the JobQuest or MOSES databases. Subsequently, the review examiner affirmed the denial of training benefits because at the hearing on November 15, 2019, he, too, found no evidence that the claimant's chosen program was an approved training program. *See* Finding of Fact # 8 and Exhibit 2. While this may have been true at the time of the initial adjudication and hearing, our review of the JobQuest database shows the Accounting and Bookkeeping

Fundamentals Certificate program at NECC is listed as approved for training benefits, with Course ID # 1122737.¹ Further review of the MOSES database shows this approval was granted on October 29, 2019.

We, therefore, conclude as a matter of law that the claimant's chosen program has been approved for training benefits, and that the claimant is entitled to training benefits under G.L. c. 151A, § 30(c).

However, the regulations governing training benefits allow these benefits to be paid only while the claimant is attending an *approved* program. Specifically, 430 CMR 9.05(4) states:

A claimant who begins attending a training program before his or her participation in the program is approved, continues to be subject to the requirements of M.G.L. 151A, §§ 24(b) and 25(c) until that approval is given.

Here, where the claimant's program was not listed as approved in MOSES until October 29, 2019, the claimant is not eligible for training benefits or a waiver of the work-search requirements under G.L. c. 151A, § 30(c), until that date. We affirm the portion of the review examiner's decision, which denied benefits to the claimant from September 8, 2019, until October 28, 2019.²

¹ See <https://jobquest.dcs.eol.mass.gov/jobquest/TrainingDetails.aspx?ti=1122737>.

² We note that the claimant has a hearing scheduled on Issue ID # 0032 4327 19, which denied her regular unemployment benefits under G.L. c. 151A, § 24(b), from September 8, 2019, through the end of her program on February 29, 2020. The practical outcome of our decision today is to limit any disqualification under that issue to the period from September 8 through October 28, 2019.

The claimant must still attend that hearing in order to establish her eligibility under G.L. c. 151A, § 24(b), and qualify for regular benefits from September 8 through October 28, 2019.

Pursuant to G.L. c. 151A, § 30(c), and 430 CMR 9.05(4), we reverse the portion of the review examiner's decision denying benefits after October 28, 2019, and we conclude that the claimant is eligible for training benefits from October 29, 2019, through February 28, 2020, so long as she meets all of the requirements of the statute and its applicable regulations.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 17, 2019



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.

JPC/rh