

Claimant entitled to a waiver of the availability and work search requirements under G.L. c. 151A, § 24(c) and 430 CMR 9.06(2), where (1) she received WIOA funding to attend a hybrid medical assistant certificate training program between two community colleges; (2) her program was noted as approved in Career Center MOSES notes; and (3) she received Notices of Approval for training at the first community college, and later for the second community college.

**Board of Review
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Issue ID: 0032 6496 17

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

The claimant was separated from full-time employment and filed a claim for unemployment benefits with the DUA on November 13, 2018, which was subsequently approved. On February 5, 2019, the claimant submitted an application for training benefits. On March 22, 2019, her application was approved by the agency for the period beginning February 11, 2019, through April 6, 2019. After the week ending April 6, 2019, the claimant stopped certifying for benefits for a period of time.

The claimant resumed certifying for the week ending November 2, 2019, then opened the instant claim for benefits on November 10, 2019. However, she was disqualified indefinitely as of November 10, 2019, in a determination issued on February 7, 2020. The claimant appealed that disqualification to the DUA hearings department. Following a hearing on the merits, attended by the claimant, the review examiner affirmed the agency's determination and denied benefits in a decision rendered on March 28, 2020. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was attending a full-time training program and was neither available for nor searching for full-time work as of November 10, 2019, and was thus disqualified from benefits pursuant to G.L. c. 151A, § 24(b).¹ 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, and information available to us through the DUA's UI Online electronic database.

¹ The review examiner's decision applied an end date of January 4, 2020, to what had previously been an indefinite disqualification. *See* Exhibit # 8. Thus, the period before the Board here is from November 10, 2019, through January 4, 2020.

The issue before the Board is whether the review examiner's conclusion, that the claimant is ineligible for regular unemployment benefits because she was neither available for nor searching for full-time work while attending a full-time training program, 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's appeal is from a determination which denied her benefits under Section 24(b) of the Law for the weeks-beginning 11/10/19 to 1/4/20.
2. The claimant was attending a full-time course at Greenfield Community College beginning in February 2019. The claimant was enrolled in the Medical Assistant Certificate program.
3. The claimant was not available for full time work from the week beginning 11/10/19 to 1/4/20. From the end of October to the end of December the claimant attended an internship in addition to attending class. She was in attendance in the internship from Monday through Thursday, 34 hours a week 7:30 a.m. to 3:30 p.m. or 9 a.m. to 5:30 p.m. depending on the day and in class on Fridays for 6 hours from 9 a.m. to 2:30 p.m.
4. The claimant had been regularly employed as a Landscaper/Gardener.
5. The claimant did not look [sic] for work during this time.

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 the portion of Finding # 2 which states the claimant attended her training program at Greenfield Community College (GCC). We note that the claimant's application for training benefits (Exhibit # 4) provides that she was to begin her medical assistant certificate at Holyoke Community College (HCC) from February 11, 2019, through May 20, 2019, and would complete it at GCC from May 22, 2019, through December 20, 2019.² In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, we reject the review examiner's legal conclusion that the claimant is ineligible for unemployment benefits for the period at issue, for the reasons outlined below.

The review examiner denied benefits pursuant to G.L. c. 151A, § 24(b), which provides, in pertinent part, as follows:

² We note that the claimant uploaded her diploma from GCC into UI Online, confirming that she received her medical assistant certificate on January 15, 2020. See "[Name A] FAX" uploaded to UI Online on February 10, 2020, in the claimant's "Fact-Finding Documents: Received" summary.

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

Under G.L. c. 151A, § 24(b), the claimant must prove that she meets each requirement of this statute. The review examiner found that, between November 10, 2019, and January 4, 2020, the claimant was pursuing her medical assistant training program, which included both coursework and an internship. During this period, the review examiner concluded that the claimant was neither available for full-time work nor actively seeking full-time work. While the review examiner's findings accurately reflect the claimant's testimony, the review examiner's conclusion denying benefits is incorrect as a matter of law.

A claimant who enrolls in an approved training program is entitled to a waiver of the obligation to search for work, as well as to an extension of up to 26 weeks of additional benefits, under G.L. c. 151A, § 30(c). The procedures and guidelines for implementation of training benefits are set forth in 430 CMR 9.00–9.08. 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.

A claimant may only participate in one training program in a benefit year. If circumstances cause a claimant to seek approval to participate in a different training program, the new application shall be deemed to have been filed on the date the completed application for the originally-approved program was filed. *See* 430 CMR 9.05(8).

As noted above, the claimant applied for training benefits to attend a medical assistant certificate program on February 5, 2019. *See* Exhibit # 4. Typically, a claimant's training program is conducted at one training provider. The program at issue here is unusual in that the claimant began her studies at HCC from February through May of 2019, but completed her program at GCC from May through December of 2019. While unusual, we note that the claimant's sole application for training benefits was completed by representatives of both HCC and GCC.

The evidence before us also includes notes from the claimant's work with staff at her local MassHire Career Center, as memorialized by staff notes from the Massachusetts One-Stop Employment Services (MOSES) database. *See* Exhibit # 5. The MOSES notes indicate that the joint HCC-GCC program was confirmed as an approved program on May 20, 2019.³

We note that while the claimant submitted her application for training benefits to attend her program at HCC and GCC on February 5, 2019, the initial DUA Section 30 adjudication apparently did not address the GCC portion of her application until February 27, 2020, when it found her eligible for the 26-week extension of benefits, as well as the waiver of work search requirements. *See* Issue ID # 0033 7558 13.

³ The notes in MOSES also show that the claimant received tuition assistance to attend her program. Where a claimant secures tuition reimbursement through a career center, such reimbursement often comes from the Workforce Innovation and Opportunity Act of 2014 (WIOA). The claimant represented that she was attending a "WIOA" [sic] training program. *See* Exhibit # 6. A training program that is eligible for WIOA funding is deemed an approved training program for the purposes of Section 30. *See* 430 CMR 9.04(2)(f).

But this latter determination — issued more than a year after the claimant had submitted her completed application for training benefits, more than nine months after the note in MOSES indicated that the program was approved, and more than a month after the claimant actually completed her training program — did not address the claimant’s period of eligibility. Instead, it contained only a vague directive:

Refer to Issue Identification Number: 0029 3732 71-03 Availability Issue,
Claimant’s Inbox, a determination for Section 30 Issue was sent on 3/22/2019.

Following this vague directive, our review of Issue ID # 0029 3732 71 shows that, on December 13, 2019, an adjudicator determined that the claimant satisfied the requirements of G.L. c. 151A, § 24(b), from February 10, 2019, and indefinitely thereafter, if otherwise eligible. This precedes the February 7, 2020, determination at issue in this case. *See* Exhibit # 9.

Our review of all of the evidence before us compels a conclusion that the claimant was participating in an approved training program pursuant to G.L. c. 151A, § 30(c), and the portions of 430 CMR 9.01 *et seq.* cited above. Approval for her program was initially conferred by the DUA on March 22, 2019, and was very belatedly re-conferred on February 27, 2020. Because the claimant was attending an approved training program, she is entitled to a waiver of the availability and work search requirements under 430 CMR 9.06(2). *See also* G.L. c. 151A, § 24(c).

We, therefore, conclude as a matter of law that the claimant is entitled to benefits and does not have to meet the requirements of G.L. c. 151A, § 24(b), during the period at issue.

The review examiner’s decision is reversed. The claimant is entitled to receive benefits from November 10, 2019, through January 4, 2020.



Paul T.

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Fitzgerald, Esq.

DATE OF DECISION - June 29, 2020

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
(See Section 42, Chapter 151A, General Laws Enclosed)**

The last day to appeal this decision to a Massachusetts District Court is ordinarily thirty days from the mail date on the first page of this decision. However, due to the current COVID-19

(coronavirus) pandemic, the 30-day appeal period does not begin until July 1, 2020⁴. If the thirtieth day falls on a Saturday, Sunday, or legal holiday, the last day to appeal this decision is the next business day 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.

JPCA/rh

⁴ See Supreme Judicial Court's Second Updated Order Regarding Court Operations Under the Exigent Circumstances Created by the COVID-19 (CORONAVIRUS) Pandemic, dated 5-26-20.