

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

Issue ID: 0033 4462 37

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 the claimant regular unemployment benefits while she attends a full-time training program that did not have approval for training benefits through the Training Opportunities Program. We review, pursuant to our authority under G.L. c. 151A, § 41. We affirm the decision to deny benefits but modify the period of the claimant's disqualification.

On February 1, 2020, the agency initially determined that the claimant was not entitled to unemployment benefits. The claimant appealed and attended a hearing. In a decision rendered on March 26, 2020, the review examiner affirmed the agency determination, concluding that the claimant was not available and actively seeking work while enrolled in a full-time training program, and, thus, was disqualified under G.L. c. 151A, § 24(b). The review examiner also modified the period of the claimant's disqualification. The Board accepted the claimant's application for review.

Ruling of the Board

After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we conclude that the review examiner's decision is based on substantial evidence and is free from any error of law affecting substantive rights.

But while we agree that the decision to deny benefits was supported by substantial and credible evidence, we believe that the review examiner incorrectly modified the period of disqualification as beginning on December 29, 2019. We take administrative notice that the application for training benefits submitted by the claimant to the review examiner on or about March 3, 2020, is difficult to read with regard to the start date of the claimant's program. However, the partial application for training benefits submitted by the claimant with her request for the hearing (Exhibit # 4, pp. 5–6) shows that the claimant began her studies on January 22, 2020. Further, the review examiner explicitly found that the claimant was not accepted into her training program until January 19, 2020. *See Finding # 3.* The application in evidence more clearly supplies the start date of the claimant's program, and it would be illogical to disqualify the claimant from regular benefits under G.L. c. 151A, § 24(b), prior to her actual acceptance into her training program.

The review examiner's decision is, therefore, affirmed in part and reversed in part. The claimant is denied regular unemployment benefits beginning January 22, 2020, and for subsequent weeks, until such time as she meets the requirements under G.L. c. 151A, § 24(b). If there is a change of

circumstances (including but not limited to withdrawal from her training program), the claimant may request a new determination. If the claimant is subsequently found to be eligible for training benefits under G.L. c 151A, § 30(c), the availability and work search requirements in this case would be waived.

N.B.: In our review of this appeal, we also noticed that the claimant uploaded a document into UI Online on or about March 16, 2020. In this document, the claimant requested a hearing on her disqualification under G.L. c. 151A, § 30(c). *See* Issue ID 0033 9239 62. We shall bring this to the attention of the DUA Hearings Department, so that a hearing can be scheduled accordingly.



Paul T.

BOSTON, MASSACHUSETTS

Fitzgerald, Esq.

DATE OF DECISION - April 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 June 1, 2020¹. 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.

JPC/rh

¹ *See* Supreme Judicial Court's Updated Order Regarding Court Operations Under the Exigent Circumstances Created by the COVID-19 (CORONAVIRUS) Pandemic, dated 4-27-20.