

While the claimant was on a break from her approved training program for longer than three weeks, she was not eligible for Section 30 benefits pursuant to G.L. c. 151A, § 30(c). During this same period, she became eligible for EB benefits under G.L. c. 151A, § 30A, once she obtained child-care for her daughter and was available for some type of suitable work.

**Board of Review
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Issue ID: 0043 3605 35

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 we affirm in part and reverse in part.

The claimant filed a claim for unemployment benefits with the DUA, effective September 15, 2019, which was approved. She entered an approved training program and became eligible for an extension of benefits under G.L. c. 151A, § 30(c) (Section 30 benefits). However, in a determination issued on May 26, 2020, the claimant was disqualified from receiving Section 30 benefits from June 28 through September 5, 2020. 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 initial determination and denied benefits in a decision rendered on October 20, 2020. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was on an extended break from her approved training program and, thus, she was disqualified under G.L. c. 151A, § 30(c) and 430 CMR 9.07(2). 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 obtain additional evidence about the claimant's availability for work during her school break. The claimant participated in the remand hearing. Thereafter, the review examiner issued his consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant was not eligible for any unemployment benefits while on an extended break in her approved Section 30 training program, is supported by substantial and credible evidence and is free from error of law, where the record shows that, during her school break, the claimant was potentially eligible for benefits under a different unemployment compensation program for weeks when she was available for work.

Findings of Fact

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

1. On 01/03/20, the claimant filed a claim for unemployment benefits effective 09/15/19.
2. The claimant is a full-time student at Lasalle College seeking a bachelor's degree in the Criminal Justice Program with an expected graduation date of 12/18/20.
3. The claimant had applied for Section 30 benefits and has been approved for these benefits.
4. The claimant has fully exhausted all of her regular unemployment benefits and was receiving Section 30 extended benefits when her school year ended on 05/11/20.
5. On 05/26/20, the claimant was sent a Notice of Disqualification informing the claimant that she is not eligible for Section 30 benefits during a regular school vacation break of more than three weeks.
6. The claimant was disqualified from receiving benefits during the summer school break from 06/28/20 through 09/05/20.
7. The claimant had no health issues whatsoever that would prevent her from returning to full-time work during the school break period.
8. The claimant was not available to work during the school break because her daughter's daycare had closed due to COVID-19.
9. On 08/12/20, the claimant placed her daughter in a new daycare facility and was again available to work.
10. The claimant was seeking work during the summer break period until she stopped her job search on 08/23/20 because she was preparing to return to full-time school in September 2020.
11. The claimant focused her job search on-line using Indeed.com and other on-line sites with a focus on security jobs and armed security positions as the claimant is licensed to carry a firearm. The claimant could not do in-person job search activities due to COVID-19.
12. The claimant provided her job search logs.
13. On 09/08/20, the claimant returned to full-time school and her Section 30 extended benefit payments resumed.

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 original 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. Although we agree with the review examiner's legal conclusion that the claimant did not qualify for Section 30 benefits during her extended school break, we disagree that she was ineligible for any other unemployment compensation during that entire period, as outlined below.

The claimant seeks 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 also promulgated regulations, which state that claimants who are enrolled in approved training programs are entitled to continue receiving Section 30 benefits only while in attendance at the training course. 430 CMR 9.06(1). They may also be paid benefits during semester or other breaks that do not exceed three weeks. 430 CMR 9.07.

In the present case, the claimant did not participate in her approved training program during the summer of 2020. *See Consolidated Findings ## 4 and 13.* In her appeal, the claimant explained that she could not participate over the summer, because her school would not pay for her on-line courses. However, the inability to pay tuition is not a basis to award Section 30 benefits. Because she was not participating in her approved training program for a period beyond three weeks, we agree that the claimant was not eligible for Section 30 benefits during this time.

Nonetheless, the DUA's UI Online record keeping system shows that, during the weeks in question, the claimant was potentially eligible for extended benefits under G.L. c. 151A, § 30A (EB benefits), a separate program which triggered on due to the high unemployment rate during the COVID-19 pandemic. For the EB benefit program, as with the regular unemployment benefit program, claimants are ordinarily required under federal and Massachusetts law to be physically capable of, available for, and actively seeking full-time work, and they may not turn down suitable work. *See G.L. c. 151A, §§ 30A and 24(b).* However, because the weeks at issue in this appeal are June 28 through September 5, 2020, we must also consider temporary modifications to the unemployment law brought about by the COVID-19 pandemic.

In March, 2020, Congress enacted the Emergency Unemployment Insurance Stabilization and Access Act (EUISAA) which, among other things, permitted states to modify their unemployment compensation law and policies with respect to work search and good cause on an emergency

temporary basis as needed to respond to the spread of the COVID-19 pandemic.¹ The U.S. Department of Labor has also advised states that they have significant flexibility in implementing the able, available, and work search requirements, as well as flexibility in determining the type of work that is suitable given an individual's circumstances.²

In response, the DUA has temporarily waived the requirement that claimants actively search for work.³ This policy is retroactive to March 8, 2020.⁴ Thus, the fact that the claimant did not search for work beginning August 23, 2020, as she prepared to return to school, does not disqualify her from receiving EB benefits. *See Consolidated Finding # 10.*

The DUA has also adopted a more flexible policy for claimants who cannot perform their usual work because childcare was closed or unavailable due to the COVID-19 health emergency.⁵ However, even under this flexible policy, claimants must be available for some type of work. Their availability may not be so limited as to constitute a withdrawal from the labor market.⁶ Here, the claimant testified that, until she was able to obtain new child-care on August 12, 2020, she was not available for full- or part-time work. *See Consolidated Finding ## 8 and 9.*⁷ Effectively, from June 18 through August 11, 2020, the claimant had removed herself from the workforce and she did not meet the able and available requirements for EB benefits.

We, therefore, conclude as a matter of law that, during the period that the claimant was on an extended break from her approved Section 30 training program, she was not eligible for benefits pursuant to G.L. c. 151A, § 30(c). We further conclude that the claimant was eligible for EB benefits under G.L. c. 151A, § 30A, in the weeks that she was available for suitable work.

The review examiner's decision is affirmed in part and reversed in part. The claimant is denied Section 30 benefits for the period June 28 through September 5, 2020. The claimant is eligible for EB benefits for the period August 9 through September 5, 2020, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 29, 2021



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

¹ *See* EUISAA, Pub. Law 116-127 (Mar. 18, 2020), § 4102(b).

² *See* U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 10-20 (Mar. 12, 2020), 4(b); and UIPL 24-20 (May 14, 2020), Attachment I, question 6, p. I-2.

³ *See* DUA UI Policy and Performance Memo (UIPP) 2020.15 (Nov. 25, 2020), p. 2.

⁴ *See* UIPP 2021.02 (Jan. 22, 2021), p. 1.

⁵ *See* UIPP 2020.12 (Oct. 8, 2020).

⁶ *See* UIPL 10-20, 4(b), p.3.

⁷ We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. *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).

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.

AB/rh