Claimant, who was denied training benefits pursuant to G.L. c. 151A, § 30(c), as of the date his program's eligibility expired, was eligible for training benefits only during the period when he attended his approved training program. But, he has two weeks from the date of the decision to submit a new application for the remaining 13 weeks of training benefits on his claim.

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Issue ID: 0076 9676 73

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 he participated in a training program. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

The claimant separated from employment and filed a claim for unemployment benefits that was effective September 22, 2019, which was subsequently approved. On April 13, 2022, the DUA issued the claimant a Notice of Approval to attend a training program offered from April 1, 2022, through May 13, 2022. However, the claimant did not begin that training program as scheduled.

Instead, the claimant submitted a second application for training benefits, which the DUA received on May 26, 2022, to attend a different program with a different training provider. On June 1, 2022, the DUA denied the second application for training benefits. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by the claimant, the review examiner modified the agency's initial determination, awarding training benefits from May 22, 2022, through July 2, 2022, but denying them from July 3, 2022, through October 8, 2022, in a decision rendered on August 31, 2022. We accepted the claimant's application for review.

Training benefits were denied as of July 3, 2022, because the training program's approval had expired as of June 30, 2023, the training provider had not secured reapproval for the program, and, thus, the claimant was ineligible 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 remanded the case to take additional evidence regarding various aspects of the claimant's requests for training benefits, including documentary evidence. The claimant attended the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact and credibility assessment. Our decision is based upon our review of the entire record, including information available to us through the DUA's UI Online and Massachusetts One-Stop Employment System (MOSES) computer databases.

The issue before the Board is whether the review examiner's initial decision, which concluded that the claimant was ineligible for training benefits after his training program's approval had expired, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant filed an initial claim for unemployment benefits effective September 22, 2019, with a benefit year end date of September 19, 2020. The claimant was monetarily eligible to receive benefits.

2. Prior to filing his claim for unemployment benefits, the claimant worked full time as a maintenance technician for a housing authority from October 15, 2015, until July 18, 2018, when he injured his left hand. The claimant was paid $26.75 per hour. He worked Monday through Friday from 7:30 a.m. to 4:00 p.m. He also worked mandatory overtime of 10.5 hours a week. He earned approximately $72,000.00 annually with overtime.

3. Since filing his unemployment claim on September 24, 2019, the claimant has not worked for any employer.

4. The claimant filed 5 subsequent initial claims that [sic] he was determined monetarily ineligible to receive benefits. The benefit year begin dates for those claims were September 20, 2020, November 1, 2020, January 17, 2021, September 12, 2021, and April 3, 2022.

5. In September 2019, the claimant learned of the Training Opportunities Program (the TOP) from the Department of Unemployment Assistance (the DUA).

6. Prior to filing a TOP application, the claimant received a Bachelor of Science degree in criminal justice from [University] in 2011.

7. Since graduating from the university, the claimant engaged in self-employment painting the exterior and interiors of homes. After the claimant was hired by the housing authority, he continued to work in self-employment until January 5, 2017, when he suffered an injury to his right wrist and forearm after a snowplow was dropped on it while at work for the housing authority. Because the claimant is right-handed, he could not use his hand to paint and ended his self-employment.

8. In May 2017, the claimant had surgery (extensor carpi ulnaris tendon stabilization procedure) due to wrist pain. He returned to work for the housing authority about 3 months after the surgery. The claimant worked for the housing authority for approximately 8-9 months. He stopped working because he couldn't physically perform the manual labor of the job.

9. The claimant had an ultrasound on his wrist due to continued pain, which demonstrated inflammation of the ECU tendon. A second procedure, a tenolysis, was performed on November 24, 2018.

10. On March 10, 2020, the claimant was examined by a physician for the worker's compensation court case. The physician deemed that the claimant "appears to have residual pathology in the triangular fibrocartilage complex" and he "would conceivably be able to perform light-to-medium level work."

11. Due to his ongoing wrist pain, the claimant was determined eligible for services with Massachusetts Rehabilitation Coalition (MRC) on March 24, 2022, to seek competitive employment.

12. On April 13, 2022, the Department of Unemployment Assistance issued the claimant a Notice of Approval under Section 30(c) of the Law to attend a training program offered by [Institute A] from April 1, 2022, through May 13, 2022.

13. The claimant applied to attend this program because it was a program for administrative work, and he wanted to establish similar income to the amount he earned performing manual labor work that he was now incapable of performing due to his wrist injury.

14. The claimant did not attend the training program offered by [Institute A] because the claimant's MRC career counselor tried to obtain the proper MOSES code for the Program and was unable to obtain it after the Institute failed to provide the proper code on the claimant's TOP application to cover the claimant's entire 20-to-26-week syllabus. The Institute was nonresponsive to the counselor's request for the MOSES code. Without the [MOSES] code, the training program would not be funded by MassHire or MRC. The claimant's counselor advised him to look for another TOPS approved training program at a different institute.

15. The program offered by [Institute A] was not a good fit for the claimant because it was geared towards the technical/computer aspect of Project Management and not the [fundamentals] of Project Management.

16. The claimant certified for training benefits from March 27, 2022, through the week ending May 14, 2022, because he submitted his TOP application for the program on April 13, 2022, and the administrative female that worked in the TOP department told him to certify for benefits.

17. On May 26, 2022, the DUA received the claimant's TOP Application via email to attend a Project Management Professional PMP/CAPM Certificate Preparation program (the Program) offered by [Institute B] from May 23, 2022, until October 7, 2022.

18. The Program was approved under Section 30 from February 3, 2022, through June 30, 2022.

19. The claimant applied to the program because he had prior knowledge of project management in his self-employment, and he wanted more traditional educational experience in the field so that he is able to find a job that meets his physical limitations and allows him to earn a similar salary to what he had in his manual labor position.

20. The claimant began the program online on May 24, 2022, and it was scheduled to end on October 7, 2022. The claimant did not complete the program. The claimant stopped attending the program because it was only approved through TOP until June 30, 2022, and the program would not be paid by MassHire or MRC beyond that date. Also, the claimant stopped attending the program because he stopped receiving unemployment benefits.

21. The claimant stopped attending the program on July 14, 2022.

22. The training provider did not track the claimant's attendance and progress. The claimant was responsible for tracking his own time spent daily on the program via a spreadsheet.

23. The program was designed for students to complete 5 hours of training online Monday through Friday.

24. The claimant went in person to the Institute one day while he attended the program because he needed support with technical issues such as use of the software programs to complete the program.

25. The claimant completed the training during the weekdays and sometimes during the weekends, if he felt he needed to dedicate more time than the weekday requirements to complete homework or reread materials. The claimant has a learning disability, which causes him to take longer to perform the program work. At approximately the age of 14, the claimant was diagnosed with ADHD. He is prescribed two 20mg of instant relief Adderall daily to treat his diagnoses.

26. During the week beginning May 22, 2022, the claimant participated in the training program online remotely Tuesday for 3 hours, Wednesday for 4 hours, Thursday for 6 hours, Friday for 5 hours and Saturday for 5 hours for a total of 23 hours.

27. During the week beginning May 29, 2022, the claimant participated in the training program online remotely, Sunday for 4 hours, Tuesday for 4 hours, Wednesday for 3 hours, Thursday for 3 hours, Friday for 4 hours, and Saturday for 4 hours for a total of 22 hours.

28. During the week beginning June 5, 2022, the claimant participated in the training program online remotely Sunday for 4 hours, Monday for 5 hours, Tuesday for 5 hours, Wednesday for 6 hours, and Friday for 6 hours. The claimant reported to the Institute in person on Thursday for 5 hours to have software set up on his computer and to complete administrative work. The claimant participated in the training program for a total of 31 hours this week.

29. During the week beginning June 12, 2022, the claimant participated in in the training program online remotely Sunday for 5 hours, Monday 6 hours, Tuesday for 4 hours, Wednesday for 4 hours, Thursday for 5 hours and Friday for 5 hours for a total of 29 hours.

30. During the week beginning June 19, 2022, the claimant participated in the training program online remotely Sunday for 4 hours, Monday for 4 hours, Tuesday for 4 hours, Wednesday for 3 hours, Thursday for 3 hours, Friday for 6 hours and Sunday for 4 hours for a total of 28 hours.

31. During the week beginning June 26, 2022, the claimant participated in the training program online remotely Monday for 3 hours, Tuesday for 3 hours, Wednesday for 5 hours, Thursday for 6 hours, and Friday for 4 hours for a total of 21 hours.

32. During the week beginning July 3, 2022, the claimant participated in in the training program online remotely Tuesday for 5 hours, Wednesday for 5 hours, Thursday for 5 hours and Friday for 5 hours for a total of 20 hours.

33. During the week beginning July 10, 2022, the claimant participated in the training program online remotely Sunday for 4 hours, Monday for 6 hours, Tuesday for 6 hours and Wednesday for 5 hours for a total of 21 hours.

34. The Institute was closed, and the claimant did not perform any work for the program on Memorial Day May 30, 2022, and July 4, 2022.

35. From the week beginning July 17, 2022, through the week ending October 8, 2022, the claimant did not participate in the training program.

36. On June 1, 2022, the claimant was issued a Notice of Disqualification under Section 30(c) of the Law to attend the Program from May 23, 2022, through October 7, 2022, because he was already approved for a training program on the 2019 benefit year claim.

37. From May 13, 2022, and through May 17, [2022], the claimant attended and completed an Executive Protection Agent Training Certificate program offered by [Institute C] in person in [City A], Florida. He attended the program from 8:00 a.m. to 5:30 p.m. each day except for one day he attended from 8:00 a.m. to 10:00 p.m.

38. The claimant received a certificate of completion for the program, which reflects it was awarded in [City A], Florida on May 17, [2022]. The seal on the certificate is from the State of Nevada. The certificate is a national certificate good in every state. The institute may be licensed in the State of Nevada.

39. On or about July 14, 2022, the claimant submitted this certificate to the Department of Unemployment Assistance because MRC required the claimant to design a realistic approach to his career path. The claimant incorporated this program into his design because he wanted to combine his project management and criminal justice degree for an end goal of being a security manager that implements and designs security plans. The claimant took out a loan to attend the program because MRC would not pay for it, but his counselor agreed it would be beneficial to his career path to attend the program.

40. On July 12, 2022, the claimant's career counselor from MRC provided the claimant with the letter that was submitted to the Department of Unemployment Assistance on July 15, 2022, to assist the claimant in his training benefits eligibility from the Department of Unemployment Assistance.

Credibility Assessment:

Based on the requested medical documentation submitted into evidence by the claimant, it has been established that the claimed sustained an injury to his right wrist on January 5, 2017, which continues to negatively impact his ability to perform manual labor work. Because the claimant is right-handed and is limited to light to moderate manual labor duties, it affected his ability continue in his job as a maintenance technician for the housing authority or earn a living as a house painter going forward. Ultimately, this injury led the claimant to receive assistance from the MRC in receiving services to allow him to find new gainful employment in a different profession.

The claimant has a Bachelor of Science degree in Criminal Justice, which he has not used in his employment history since he obtained it. However, the claimant's career path plan, which the MRC had him design, is to obtain training in the fundamental of project management so that he can couple it with his degree and find employment in security design that would not require him to perform manual labor and would provide him with the level of compensation he earned in his previous employment ventures.

The claimant did not attend the first TOP program that he was approved for at the [Institute A]. However, the claimant did not attend the program because the claimant's career counselor at the MRC found the institute to be non-responsive to her requests for the proper MOSES code for the program and told him the MRC would not fund his attendance in the program. Therefore, the claimant felt he had no other choice but to look for another program management training course at another Institute.

Although the claimant did not attend the program at [Institute A], the claimant certified and received training benefits from March 27, 2022, through the week ending May 14, 2022. The claimant testified that he certified for the benefits because he was instructed to do so by an employee of the TOP department. There is no evidence to support the claimant was not given these instructions by the employee.

The claimant found a new program management training program offered by [Institute B] and he began attending it on May 24, 2022. Based on the spreadsheet he submitted into evidence, wherein he tracked his attendance in the program, the claimant spent 20 or more hours each week from the week beginning May 22, 2022, through the week ending July 16, 2022, participating in the program. At the initial hearing, the claimant testified that he performed the training program work on the weekend when he had time. However, the claimant clarified that he performed the program work Monday through Friday as the TOP application reflected were the days of week required and in addition, he performed work on Saturday and/or Sunday, if he need additional time to complete homework or reread materials due to his learning disability of ADHD, which evidence of such diagnoses is included in the medical documentation submitted into evidence.

The claimant stopped attending the training on July 14, 2022, because it was only approved by unemployment through June 30, 2022, and not his scheduled end date of October 7, 2022. Because the program was not TOP approved beyond that date and would not be paid for by MassHire and/or MRC, the claimant chose to stop attending the program as well as because he stopped receiving unemployment benefits. The claimant contended he should not attend a TOP program if he is not receiving unemployment benefits because it wasn't how the system was designed. He also contended that he needed his unemployment benefits to commute to school. However, the claimant's contention is unreasonable as his program was online and he only reported to the institute one day, June 9, 2022, to receive technical support, during the entire time he attended.

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 credibility assessment is reasonable in relation to the evidence presented.

In order to qualify for training benefits, a claimant must meet all of the requirements of 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 while enrolled in training. 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 he fulfills all of the requirements to receive training benefits. One such requirement is that the claimant's chosen training program and training provider have met the measurable standards set forth in 430 CMR 9.04(2). The review examiner found that the [Institute B] training program chosen by the claimant was only approved in the MOSES System from February 3, 2022, through June 30, 2022. *See* Consolidated Finding # 18. While the claimant began attending his training program at [Institute B] on May 24, 2022, the review examiner properly concluded that he was eligible for training benefits beginning on Sunday, May 22, 2022. *See* Consolidated Finding # 20.

However, when the program's eligibility in MOSES expired as of June 30, 2022, the claimant stopped attending his program because his program was only approved through that date, his program would no longer be paid for through Mass Hire or the MRC thereafter, and he stopped receiving unemployment benefits. Consolidated Finding # 20. The claimant last attended his program on July 14, 2022. *See* Consolidated Finding # 21. The review examiner concluded that because the program's MOSES eligibility had expired, the claimant's eligibility for training benefits ended as of Saturday, July 2, 2002, and disqualified him from training benefits thereafter.

The review examiner further found that the claimant did not participate in his training program as contemplated from July 17, 2022, through October 8, 2022. *See* Consolidated Finding # 35. Where a claimant does not attend his chosen program as scheduled, he is not entitled to training benefits during that period. "Benefits provided under [Section 30(c)] are payable only while the claimant is in attendance at the training course…." 430 CMR 9.06(1).

We, therefore, conclude as a matter of law that the claimant's eligibility for training benefits does not meet the standards and criteria set forth in G.L. c. 151A, § 30(c), and 430 CMR 9.01– 9.09, as his program's eligibility for training benefits ended on June 30, 2022, and he failed to attend the program after July 14, 2022.

G.L. c. 151A, § 30(c), does, however, provide that "the commissioner, in his discretion, may extend the period once for not more than two weeks for any applicant whose initial application is denied." Thus, the claimant may submit a new application for training benefits to attend an approved training program, on the claim for benefits he filed effective September 22, 2019, within two weeks of this decision. *See* 430 CMR 9.05(6)(b).

We note, however, that the provisions of G.L. c. 151A, § 30(c), permit claimants to collect "up to 26 times his or her benefit rate . . . ." *See* 430 CMR 9.01. Here, the claimant has already received 13 weeks of RED benefits on this claim, from the week ending April 2, 2022, through the week ending July 2, 2022.[1] Thus, the claimant may only be entitled to up to 13 additional weeks of

[1] The claimant certified for and received training benefits for the seven weeks he falsely claimed he was attending the [Institute A] from the week ending April 2, 2022, through the week ending May 14, 2022, but was subsequently found to have been overpaid those benefits because he had not attended the training program at issue. *See* Issue ID # 0078 0653 25. On September 30, 2022, the claimant received a waiver for this overpayment. *See* Issue ID # 0078 3131 14. Where the claimant received these seven weeks of RED benefits and received a waiver of the subsequent overpayment, he was entitled to only 19 more weeks of RED benefits on the claim he filed effective September 22, 2019. The claimant received six weeks of RED benefits from the week ending May 28, 2022, through July 2, 2022, while attending his program at [Institute B]. Thus, the claimant has received 13 weeks of RED benefits on this claim and is only entitled to up to 13 additional weeks of RED benefits on the claim.

training benefits for any approved training program he may choose to attend on the claim he filed effective September 22, 2019.

The review examiner's decision is affirmed. The claimant is entitled to receive training benefits pursuant to G.L. c. 151A, § 30(c), from May 23, 2022, through June 30, 2022. He is not entitled to receive training benefits from the week beginning July 3, 2022, through the week ending October 8, 2022.



BOSTON, MASSACHUSETTS
DATE OF DECISION - January 24, 2024

Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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 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.

JPCA/rh