

The claimant was not eligible for Section 30 training benefits during the semester that he reduced his community college courseload down to six credits, because it was not full-time enrollment as required under 430 CMR 9.04(2)(b)(1). However, he was entitled to such training benefits during the subsequent summer and fall terms, when the record shows that he was enrolled full-time.

**Board of Review
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Issue ID: 0080 2890 57

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 an extension of unemployment benefits while the claimant participated in a training program. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm in part and reverse in part.

The claimant separated from his employment and filed a claim for unemployment benefits with the DUA, effective August 14, 2022, which was approved. Subsequently, he filed an application for an extension of benefits to attend a training program (training benefits or Section 30 benefits), which was initially approved. However, in a determination issued on June 8, 2023, this approval was revoked. The claimant appealed the latter determination to the DUA hearings department. Following a hearing on the merits, the review examiner modified the agency's determination and denied training benefits from January 18 to May 18, 2023, in a decision rendered on July 7, 2023.¹ We accepted the claimant's application for review.

Training benefits were denied after the review examiner determined that the claimant's training program was not full-time, and, thus, he was not eligible pursuant to G.L. c. 151A, § 30(c), and 430 CMR 9.04(2)(b). 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, and the claimant's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant's training program did not meet the full-time enrollment requirement under 430 CMR 9.04(2)(b), when he had to drop classes due to not taking the prerequisite courses, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

¹ Although the hearing decision states the disqualification end date is May 8, 2023, we believe that the review examiner meant to write May 18, 2023, the end of the claimant's spring 2023 semester, as explained below.

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

1. The claimant filed a claim for unemployment benefits with an effective date of 8/14/2022. The claimant's benefit year ended on 8/12/2023.
2. Prior to filing for benefits, the claimant worked full time in a machine shop. The claimant does not have any college degrees or certifications.
3. The claimant enrolled in an associate degree in business (Program) through a community college that he began in the fall of 2022 and was to complete by 5/18/2024.
4. The claimant learned about the Training Opportunities Program (TOP) through the school he was attending.
5. The claimant submitted a TOP application on 1/23/2023, which indicated that the claimant was enrolled in 12 credits for the spring 2023 semester and 12 credits for the fall 2023 semester.
6. The claimant was approved for TOP/Section 30 benefits for the period beginning 1/18/2023 and ending 5/8/2023 [sic].
7. The claimant provided his transcript which indicated that the claimant only earned 6 credits for the spring 2023 semester and that the claimant took English Comp I and Intro to Sociology.
8. The claimant's course schedule shows that the claimant was initially enrolled in 5 courses for a total of 14 credits (Intro to Business, English Comp I, Stats Support, Statistics, and Intro to Sociology).
9. On 6/8/2023, the DUA issued a Notice of Disqualification to the claimant under Section 30(c) of the Law revoking his Section 30 benefits because the claimant failed to maintain full time status in the Program.
10. On 6/14/2023, the claimant filed an appeal of the Disqualification.
11. The claimant is still enrolled in the program.
12. The claimant exhausted his regular UI benefits.

[Credibility Assessment:²]

² We have copied and pasted here the portion of the review examiner's decision that includes her credibility assessment.

In this case, the claimant's TOP application indicated that he was enrolled in 12 credits for the spring 2023 semester; however, the claimant's transcript only shows the claimant earning 6 credits for the spring 2023 semester and that he took English Comp I and Intro to Sociology. The claimant's course schedule shows that the claimant was initially enrolled in 5 courses for a total of 14 credits (Intro to Business, English Comp I, Stats Support, Statistics, and Intro to Sociology). During the hearing, the claimant alleged that his academic advisor informed him via email three weeks into the semester that he was not allowed to enroll in Intro to Business and Statistics until he took prerequisite courses. The claimant further stated that he did not enroll in any additional courses at that time because it was too late in the semester. When asked to provide a copy of the email from his advisor, the claimant stated that he would look for it, but he likely deleted it. The record was left open for the claimant to upload the email, but he did not. As such, the claimant's testimony that his academic advisor informed him three weeks into the semester that he had to withdraw from Intro to Business and Statistics is not deemed credible.

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 findings are supported by substantial and credible evidence; and (2) whether the review examiner's conclusion is free from error of law. After such review, the Board adopts the review examiner's findings of fact except as follows. The portion of Finding of Fact # 6 that indicates that the claimant's approval for Section 30 benefits ended on May 8, 2023, is inaccurate, as the disqualifying determination revoked the initial approval of Section 30 benefits, which covered the period from January 18, 2023, to December 15, 2024.³ In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, while we agree with the review examiner's legal conclusion that the claimant is ineligible for benefits during his spring 2023 semester, we address and award training benefits during the summer and fall 2023 academic terms.

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 these training benefits are set forth in 430 CMR 9.00–9.09.

One of the requirements for approval is that the student be enrolled full-time. Specifically, 430 CMR 9.04 provides, in relevant part, as follows:

(2) Training providers, and in particular, the training they offer must meet the following measurable standards: . . .

³ See Exhibit 7, the DUA's June 8, 2023, determination. Although not included in the findings of fact, this exhibit, as well as Exhibits 3 and 10 referenced below, are part of the unchallenged evidence introduced at the hearing and placed in the record, and they are thus properly referred to in our decision today. 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).

(b) Be a full-time course, providing a minimum of at least 20 hours of supervised classroom training per week; provided, however, that:

1. if the program is offered by a community college, college, or university, this requirement shall be met if the program provides a minimum of 12 credits each semester or the equivalent; ...

Although the claimant's application for training benefits (TOP application) stated that he would be enrolled in 12 credits during the spring 2023 semester, from January 18 to May 18, 2023, he withdrew from three courses, resulting in a courseload of only six credits during that semester. *See Findings of Fact ## 5, 7, and 8.* Because six credits is less than the 12 credits considered to be full time enrollment for a community college pursuant to 430 CMR 9.04(2)(b)(1), we agree that he failed to meet the criteria for Section 30 benefits during that semester.

In his Board appeal, the claimant asserts that he should not be penalized for the school's mistake. As the review examiner noted in her credibility assessment, the claimant testified that, three weeks into his semester, his academic advisor told him in an email that he had to withdraw from three courses at a point when it was too late to enroll in additional courses. In our view, it makes no difference that the claimant did not produce the academic advisor's email in the short window allowed by the review examiner,⁴ because we do not accept that this was the school's mistake.

The claimant also testified that he did not realize that he had to take prerequisites for those three courses; he just went online and "signed up for whatever."⁵ We can reasonably infer that the claimant did not read the program requirements carefully before he "signed up for whatever." Even without the program enrollment schedule in the record, common sense dictates that the school would expect him to enroll in prerequisite courses first. In short, we decline to accept the claimant's argument that he was not responsible for the change to part-time enrollment in the spring 2023 semester.

In her decision, the review examiner failed to consider the claimant's Section 30 benefit eligibility beyond the spring 2023 semester, even though the DUA's June 8, 2023, determination indicated that he had previously been approved to attend this training program until 2024. The claimant testified that he was enrolled full-time in the training program's summer 2023 term and enrolled full-time again in the fall 2023 semester, when he would take 12 credits. This is supported by Exhibit 3, a printout showing his registration for four courses during the abbreviated summer 2023 term (May 22 to August 11, 2023), and his TOP application, which shows enrollment in 12 credits in the fall 2023 semester (September 6 to December 15, 2023).⁶ *See Finding of Fact # 5.* Thus, he has demonstrated that he resumed full-time enrollment in these next school terms.

Given this record, we conclude as a matter of law that the claimant was not enrolled in a full-time training program during the period from January 18 to May 18, 2023, as required pursuant to G.L.

⁴ The review examiner gave the claimant only until the end of the day of the hearing.

⁵ This portion of the claimant's testimony as well as that referenced below is also part of the unchallenged evidence in the record.

⁶ Exhibit 10, the TOP application, shows a January 15, 2024, end date for the fall 2023 semester. Given that the initial Section 30 approval ran until December and community college fall semesters typically end in December, we believe that the January date to be a scrivener's error.

c. 151A, § 30(c), and 430 CMR 9.04(2)(b)(1). We further conclude that he was enrolled full-time during the period from May 22 to December 15, 2023.

The review examiner's decision is affirmed in part and reversed in part. The claimant is denied Section 30 benefits for the week beginning January 15, 2023, to May 20, 2023. The claimant is entitled to receive Section 30 benefits for the week beginning May 21, 2023, to December 15, 2023, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - June 14, 2024



Paul T. Fitzgerald, Esq.
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 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