

The claimant met her burden to show that she was enrolled full-time during the summer and fall terms in the final year of her associates degree training program. Both the school's most recent written statement and her Academic Counselor's unsworn testimony confirm this. Held she is eligible for training benefits pursuant to G.L. c. 151A, § 30(c) and 430 CMR 9.04(2)(b)(1), during these two terms.

**Board of Review
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**Issue ID: 0080 3055 51
0080 4963 79**

Introduction and Procedural History of this Appeal

The claimant appeals two decisions by a review examiner of the Department of Unemployment Assistance (DUA) to deny an extension of the claimant's unemployment benefits while she participated in a training program. We review both decisions pursuant to our authority under G.L. c. 151A, § 41, and we affirm in part and reverse in part.

The claimant had separated from employment and was approved for benefits under a 2022-01 claim, effective June 19, 2022. She was later approved for an extension of benefits to attend a training program (training benefits or Section 30 benefits) through May 20, 2023. Subsequently, she submitted a new application for further training benefits from June 5, 2023, through May 15, 2024. In a determination dated June 8, 2023, DUA denied Section 30 benefits for the period from June 5 through August 10, 2023 (Issue ID # 0080 3055 51). In a separate determination dated June 10, 2023, Section 30 benefits were also denied for the period from June 5, 2023, through May 15, 2024 (Issue ID # 0080 4963 79).

The claimant appealed both determinations to the DUA hearings department. Following a consolidated hearing on the merits, the review examiner affirmed the agency's determinations to deny training benefits in separate decisions rendered on July 1, 2023. We accepted the claimant's applications for review of both cases.

Training benefits were denied after the review examiner determined that the claimant's training program was not full-time, and, thus, she was not eligible pursuant to G.L. c. 151A, § 30(c), and 430 CMR 9.04(2)(b). Our decision consolidates these two cases because the underlying facts and exhibits are the same. We have reviewed both records, including the recorded testimony and evidence from the hearing, the review examiner's decisions, and the claimant's appeals.

The issue before the Board is whether the review examiner's decisions, which conclude that the claimant's training program was not full-time within the meaning of 430 CMR 9.04(2)(b), is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

The review examiner's findings of fact and credibility assessment in Issue ID # 0080 3055 51 are set forth below in their entirety:

1. The claimant filed a claim for unemployment benefits with an effective date of 6/19/2022. The claimant's benefit year ended on 6/17/2023.
2. Prior to filing for benefits, the claimant worked full time in customer service for a healthcare company.
3. The claimant learned about the Training Opportunities Program (TOP) through the Department of Unemployment (DUA) website in April of 2022.
4. The claimant obtained her TOP application through the DUA website.
5. The claimant enrolled in an associate in human services degree program (Program) that she began in May of 2022 and expects to complete in May of 2024.
6. The claimant submitted a TOP application dated 7/7/2022 which indicated that the claimant was enrolled in 8 credit hours for the summer 1 semester (6/5/2023 through 7/7/2023) and 8 credit hours for summer 2 semester (7/10/2023 to 8/4/2023).
7. The claimant's school schedule indicates that the claimant is enrolled in 3 credit hours for the summer 2023 semester, and 9 credit hours for the fall 2023 semester.
8. On 6/1/2023, the claimant was contacted by a DUA representative, and the claimant indicated that she intended to enroll in an additional class for the summer 2023 semester and would be taking a total of 6 credits. The claimant was asked to provide the DUA with an updated TOP application and a letter from her program confirming the exact number of credits she will be enrolled in this summer semester as well as semester start and end date. The claimant did not provide the letter from the school.
9. On 6/8/2023, the claimant submitted a TOP application (6/8/2023 TOP application) which indicated that her classes began on 6/5/2023 and will end on 5/15/2024; the application also indicated that the claimant was enrolled as a part-time student.
10. The claimant's 6/8/2023 TOP application indicated that the claimant was enrolled part time, and that the claimant was enrolled in 6 credit hours for the summer 2023 semester, 9 credit hours for the fall 2023 semester, and 10 credit hours for the spring 2024 semester; the claimant need [sic] to obtain 25 credit hours to complete the Program.

11. The claimant filled out Parts A and B of the TOP application and signed it on 6/2/2023; the Academic Counselor of the claimant's school filled out Part D of the TOP application.
12. The Academic Counselor at the claimant's school indicated on a letter dated 6/8/2023, that the claimant will continue her program on a part-time basis to ensure academic success.
13. On 6/10/2023, the DUA issued a Notice of Disqualification to the claimant under Section 30(c) of the Law denying her Section 30 benefits because the claimant is not enrolled in the program full time.
14. On 6/21/2023, the claimant submitted a revised TOP application (6/21/2023 TOP application) which indicated that the claimant is enrolled in the Program full-time and that she is enrolled in 6 credit hours for the summer 2023 semester (which the school notes was part time [sic]), 12 credit hours for the fall 2023 semester, and 7 credit hours for the spring 2024 semester.
15. The 6/21/2023 TOP application was filled out by the same Academic Counselor as the 6/8/2023 TOP application.
16. The claimant is still enrolled in the program.

[Credibility assessment:¹]

Section 30(c) of the Law requires the claimant to be enrolled full-time in their program for the duration of the program in order to be eligible for benefits. Initially, the claimant alleged that she is enrolled in two courses for a total of 6 credits for the summer 2023 semester which the school considers full time enrollment and that she is enrolled in 12 credits for the fall 2023 semester. However, I do not find this testimony credible as the claimant's 6/8/2023 TOP application indicated that the claimant was enrolled part time, and that the claimant was enrolled in 6 credit hours for the summer 2023 semester (which the school noted was part time), 9 credit hours for the fall 2023 semester, and 10 credit hours for the spring 2024 semester. The Academic Counselor at the claimant's school indicated on a letter dated 6/8/2023, that the claimant will continue her program on a part-time basis to ensure academic success. The claimant's school schedule indicates that the claimant is enrolled in 3 credits for the summer 2023 semester, and 9 credits for the fall 2023 semester.

In addition, the record was left open for the claimant to upload a new class schedule showing that she is enrolled in 6 credit hours for the summer 2023 semester and 12 credit hours for the fall 2023 semester; however, the claimant failed to do so. The record was also left open for the claimant to upload documentation from her school

¹ We have copied and pasted here the portion of the review examiner's decision which includes her credibility assessment.

that indicated the school considers 6 credit hours as full-time enrollment for the summer 2023 semester and the claimant failed to do so.

Although the claimant submitted a revised TOP application on 6/21/2023 that shows the claimant is enrolled in 12 credits for the fall 2023 semester, the application still shows that the claimant is enrolled in 6 credits for the summer 2023 semester and the school noted that this is part time [sic] enrollment. The claimant failed to provide evidence of her full-time enrollment in the Program.

The review examiner's findings of fact and credibility assessment in Issue ID # 0080 4963 79 are set forth below.

1. The claimant filed a claim for unemployment benefits with an effective date of 6/19/2022. The claimant's benefit year ended on 6/17/2023.
2. Prior to filing for benefits, the claimant worked full time in customer service for a healthcare company.
3. The claimant learned about the Training Opportunities Program (TOP) through the Department of Unemployment (DUA) website in April of 2022.
4. The claimant obtained her TOP application through the DUA website.
5. The claimant enrolled in an associate in human services degree program (Program) that she began in May of 2022 and expects to complete in May of 2024.
6. On 6/8/2023, the claimant submitted a TOP application (6/8/2023 TOP application) which indicated that her classes began on 6/5/2023 and will end on 5/15/2024; the application also indicated that the claimant was enrolled as a part-time student.
7. The claimant's 6/8/2023 TOP application indicated that the claimant was enrolled part time, and that the claimant was enrolled in 6 credit hours for the summer 2023 semester, 9 credit hours for the fall 2023 semester, and 10 credit hours for the spring 2024 semester; the claimant need to obtain 25 credit hours to complete the Program.
8. The claimant filled out Parts A and B of the TOP application and signed it on 6/2/2023; the Academic Counselor of the claimant's school filled out Part D of the TOP application.
9. The Academic Counselor at the claimant's school indicated on a letter dated 6/8/2023, that the claimant will continue her program on a part-time basis to ensure academic success.

10. The claimant's school schedule indicates that the claimant is enrolled in 3 credit hours for the summer 2023 semester, and 9 credit hours for the fall 2023 semester.
11. On 6/10/2023, the DUA issued a Notice of Disqualification to the claimant under Section 30(c) of the Law denying her Section 30 benefits because the claimant is not enrolled in the program full time.
12. On 6/21/2023, the claimant submitted a revised TOP application (6/21/2023 TOP application) which indicated that the claimant is enrolled in the Program full-time and that she is enrolled in 6 credit hours for the summer 2023 semester (which the school notes was part time [sic]), 12 credit hours for the fall 2023 semester, and 7 credit hours for the spring 2024 semester.
13. The 6/21/2023 TOP application was filled out by the same Academic Counselor as the 6/8/2023 TOP application.
14. The claimant is still enrolled in the program.

Because the credibility assessment in Issue ID # 0080 4963 79 is identical to what appears in the review examiner's decision in Issue ID # 0080 3055 51, we refer to the assessment above.

Ruling of the Board

In accordance with our statutory obligation, we review the record and the decisions made by the review examiner in both appeals 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. We reject the portion of the Finding of Fact # 14 in Issue ID # 0800 3055 51 and Finding of Fact # 12 in Issue ID # 0080 4963 79, which are the same, insofar as it states that the school noted in the revised TOP application submitted on June 21, 2023, that six credits for the summer semester was *part-time*. This statement is contrary to what's written in the document.² As discussed more fully below, we also reject the review examiner's legal conclusion that the claimant is not eligible for further Section 30 benefits for the period from June 4, 2023, through December 23, 2023.

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.

² See Exhibit 17 in Issue ID # 0080 3055 51 and Exhibit 11 in Issue ID # 0080 4963 79, the TOP application uploaded into the DUA's electronic database, UI Online, on June 21, 2023. The school representative writes in this document that the six credit enrollment in the summer of 2023 from June 5 through August 10, 2023, is "FT." 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).

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: . . .

(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*; . . .

(Emphasis added.)

Because the claimant's training program is offered by a community college, we consider her credit hours in each semester to determine whether the training program meets the full-time enrollment requirement. The review examiner concluded that the claimant had not shown that she would be enrolled full-time from the summer of 2023 through the spring of 2024. With the exception of the final semester, we disagree.

The record in these cases is confusing because the claimant submitted several TOP applications, though they all seek Section 30 benefits for the remainder of her community college associates degree program from June 5, 2023 through May 15, 2024. *See* Findings of Fact ## 5, 6, 9, and 14 in Issue ID # 0080 3055 51 and Findings of Fact ## 5, 6, and 12 in Issue ID # 0080 4963 79. During the hearing, the claimant explained that the most recent TOP application uploaded on June 21, 2023 (June 21, 2023 TOP application), was accurate.³ *See* Exhibit 17 in Issue ID # 0080 3055 51 and Exhibit 11 in Issue ID # 0080 4963 79.

The earlier TOP applications represented that the claimant would only be enrolled part-time. *See* Finding of Fact # 9 in Issue ID # 0080 3550 51 and Finding of Fact # 6 in Issue ID # 0080 4963 79. However, the claimant testified that she would be enrolled full-time, and the June 21, 2023, TOP application shows that the claimant will be enrolled full-time during both the summer and fall terms.

In her credibility assessment, the review examiner refused to accept this evidence of the claimant's full-time enrollment. Such assessments are within the scope of the fact finder's role, and, unless they are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. *See School Committee of Brockton v. Massachusetts Commission Against Discrimination*, 423 Mass. 7, 15 (1996). "The test is whether the finding is supported by "substantial evidence." *Lycurgus v. Dir. of Division of Employment Security*, 391 Mass. 623, 627 (1984) (citations omitted). "Substantial evidence is 'such evidence as a reasonable mind might accept as adequate to support a conclusion,' taking 'into account whatever in the record detracts from its weight.'"

³ The portions of the claimant's testimony referenced here and below are also part of the unchallenged evidence introduced at the hearing.

Id. at 627–628, *quoting* New Boston Garden Corp. v. Board of Assessors of Boston, 383 Mass. 456, 466 (1981) (further citations omitted). We believe that her assessment is unreasonable in relation to the evidence presented.

First, it is important to note that the review examiner allowed the claimant less than 48 hours to produce further documentation from the school which would confirm her full-time enrollment, particularly for the summer when she would take only six credits. Given that the claimant did not have the documents in her possession, this short window was unreasonable.⁴

Second, the claimant provided sworn testimony that her enrollment in the summer and fall of 2023, at six and 12 credits respectively, was full-time. This testimony is supported by the Academic Counselor’s written statements in the more recent June 21, 2023, TOP application.

Third, we consider that the claimant would have had no control over the Academic Counselor’s earlier written statements that portray the claimant as a part-time student. During the hearing, the review examiner called the Academic Counselor in an effort to corroborate the claimant’s testimony that the Academic Counselor was new and was honest that she did not know what she was doing when she initially filled out the claimant’s Section 30 paperwork. In that phone call, the Academic Counselor readily confirmed that she was new, that the claimant was the first person she was doing this paperwork for, and that six credits could be considered full-time over the summer. However, when asked to give an oath or affirmation, the Academic Counselor adamantly refused, maintaining she was new and had to speak with her supervisor.

Inasmuch as these statements were not given under oath, they are akin to many forms of hearsay evidence. Hearsay evidence is admissible in informal administrative proceedings, and it can constitute substantial evidence on its own if it contains “indicia of reliability.” Covell v. Department of Social Services, 439 Mass. 766, 786 (2003), *quoting* Embers of Salisbury, Inc. v. Alcoholic Beverages Control Commission, 401 Mass. 526, 530 (1988). Indicia of reliability is assessed by determining, among other things, whether the underlying testimony was detailed and consistent, was resistant to the suggestiveness of leading questions, was made by a person with a motive to lie, and whether it was corroborated by other evidence in the record. Covell, 439 Mass. at 785–786. Nothing in the record suggests that the Academic Counselor had a motive to lie during the hearing, and her statement about full-time summer enrollment is corroborated by her written statements in the June 21, 2023, TOP application and the claimant’s sworn testimony that this training program was full-time in the summer and fall of 2023.

Finally, in support of her credibility assessment, the review examiner misstates the evidence. In reaching her conclusion that the claimant failed to provide evidence of her full-time enrollment, the review examiner incorrectly writes that the June 21, 2023, TOP application, “still shows that the claimant is enrolled in 6 credits for the [summer] 2023 semester and the school noted that this is *part-time* enrollment.” (Emphasis added.) That is not what is written in the June 21, 2023, TOP application. Under the Credits Per Semester section for the summer period, the Academic Counselor input the starting and end dates of “6/5/2023” and “8/10/2023,” wrote “6” credits and

⁴ The hearing was held on June 28, 2023, and the review examiner issued her decision three days later on July 1, 2023. UI Online shows that the claimant uploaded the requested documents on July 3, 2023. She also submits them with her Board of Review appeal. Ideally, we would remand the case to the review examiner to incorporate these documents into the record. However, the review examiner has left the agency.

“FT.” There is no way to know how heavily the review examiner relied upon this error in reaching her conclusion.

In this record, we have the claimant’s consistent sworn testimony and an exhibit with the most recent written school statement that the claimant was enrolled full-time in the summer and fall of 2023. These are supported by the Academic Counselor’s unsworn hearing statements. We are satisfied that the claimant has met her burden to present substantial and credible evidence that she was enrolled full-time during these terms.⁵

Inasmuch as the claimant only enrolled part-time for her final school term, the spring 2024 semester, she is not eligible for Section 30 benefits during this term.

We, therefore, conclude as a matter of law that the claimant met the requirements for Section 30 benefits during her summer and fall 2023 terms pursuant to G.L. c. 151A, § 30(c) and 430 CMR 9.04(2)(b)(1).

The review examiner’s decision is affirmed in part and reversed in part. The claimant is entitled to receive Section 30 benefits for the week beginning June 4, 2023, through December 23, 2023, if otherwise eligible. The claimant is denied Section 30 benefits thereafter.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 31, 2024



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

⁵ We decline to remand this case for a *de novo* hearing simply to perfect the record with the more school records submitted on appeal which confirm this full-time enrollment.

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