

Where the claimant failed to produce corroboration from her training provider that six credits during the summer semester was considered “full-time” attendance, she failed to meet her burden that she was eligible for training benefits during that semester. But where the claimant showed that she resumed attending school full-time during the fall semester, she was eligible for her remaining training benefits during that term pursuant to G.L. c. 151A, § 30(c), and 430 CMR 9.04(2)(b)(1).

Board of Review
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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 the claimant’s unemployment benefits from July 10, 2023, through September 2, 2023, but awarding extended benefits from September 3, 2023, through December 23, 2023. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

The claimant had separated from employment and was approved for benefits on a claim that was effective May 9, 2022. She was later approved for an extension of benefits to attend a training program (training benefits or Section 30 benefits) through May 26, 2023. Subsequently, she submitted a request for further training benefits from July 10, 2023, through August 25, 2023. In a determination issued on August 24, 2023, the DUA denied Section 30 benefits from July 10, 2023, through August 25, 2023. 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 determination in a decision rendered on April 23, 2024, affirming the denial of training benefits from July 10, 2023, through August 25, 2023, but reversing and awarding training benefits from September 3, 2023, through December 23, 2023, so long as training benefits were available to the claimant and if she was otherwise eligible. We accepted the claimant’s application for review.

Training benefits were denied from July 10, 2023, through August 25, 2023, after the review examiner determined that the claimant’s training program was not full-time during this period, and, thus, she was not eligible pursuant to G.L. c. 151A, § 30(c), and 430 CMR 9.04(2)(b)(1). However, the review examiner also determined that, when the claimant resumed attending her training program on a full-time basis as of September 3, 2023, she was eligible for further training benefits pursuant to the same section of the law and its applicable regulations. 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 allow the claimant an opportunity to provide testimony or written documentation from the training provider to corroborate the claimant’s testimony that school considered the claimant’s summer course load to be full-time. 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.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant was ineligible for training benefits during the summer of 2023 because she was only attending school on a part-time basis within the meaning of 430 CMR 9.04(2)(b)(1), and which also concluded that the claimant became eligible for training benefits when she resumed taking a full-time course load during the fall semester of 2023, 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 a claim for unemployment insurance benefits with the Department of Unemployment Assistance (DUA) effective 5/9/22.
2. The benefit year end date was 5/6/23.
3. On 12/10/22, the claimant exhausted regular unemployment benefits.
4. The claimant filed a Training Opportunities Program (Section 30) Application with the DUA to obtain her associate degree in foundations of health at a community college.
5. The application was approved for the period of 1/17/23 through 5/26/23.
6. During the summer of 2023, the claimant took one course, for three credits from 5/22/23 through 7/7/23. She took another course for three credits from 7/10/23 through 8/25/23. She passed each course.
7. The community college considers any individual who takes a three-credit course in a summer session as a full-time student.
8. In August 2023, the claimant filed a new claim that was effective 5/9/23.
9. On 9/5/23, the claimant returned to a full-time class schedule at the community college. She took four courses and earned 12 credits.
10. The classes ended on 12/22/23 and the claimant earned her associate degree.

Credibility Assessment:

In the remand hearing, the claimant testified that she was told by a representative from her community college that anyone taking a three-credit course in a summer session is considered a full-time student. Although the claimant did not obtain

documentation to support her testimony, she provided enough specific details about her conversation with the representative for her testimony to be considered credible. It is reasonable that one condensed summer course could qualify a student for full-time status.

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. After such review, the Board adopts the review examiner's consolidated findings of fact except for Consolidated Finding # 7 and the review examiner's credibility assessment, which, as discussed more fully below, are not reasonable in relation to the testimony and evidence presented. We do, however, believe that the review examiner's consolidated findings of fact support a conclusion that the claimant is entitled to the remainder of her training benefits during the fall semester of 2023, as also outlined below.

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 . . .

(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 initially concluded that the claimant had not shown that she was enrolled full-time during the summer of 2023, but that she established that she was a full-time student during the fall of 2023. After remand, we agree.

At the outset, we note that DUA records in its UI Online database show that, on the claim effective May 9, 2022, the claimant has received 19 weeks of training benefits from the week ending January

21, 2023, through the week ending May 27, 2023.¹ Pursuant to G.L. c. 151A, § 30(c), and 430 CMR 9.03(10), a claimant is entitled to up to 26 weeks of training benefits on an unemployment claim. Consequently, after May 27, 2023, the claimant is only entitled to up to seven additional weeks of training benefits on this claim.

We remanded this case to give the claimant an opportunity to corroborate her assertion that her training provider considers taking only six credits during the summer term to be full-time. In our remand order, which the review examiner entered into evidence as Remand Exhibit # 3, we specifically stated, “Kindly ask the claimant to provide documentary evidence or testimony from a representative of [her training provider] to corroborate the response” to the question of how many credits the training provider requires “during the summer semester (and each of its two summer terms) for a student to be considered full-time?”

The claimant produced a letter from an official from her training provider dated May 28, 2024, which the review examiner entered into evidence as Remand Exhibit # 5. The letter stated, in relevant part:

The [claimant] was enrolled into the courses based on availability. The courses that she would have needed to complete the program are not offered during the summer 2023.... In the event that those courses were available during the summer, it would have resulted in her being part-time during the fall 2023.

Thus, the training provider’s written response did not address the question of whether the six credits the claimant took during the summer of 2023 was considered to be full- or part-time.

In her credibility assessment, the review examiner accepted the claimant’s uncorroborated, self-serving testimony that six credits during the summer term is considered full-time. 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.’” *Id.* at 627–628, *quoting New Boston Garden Corp. v. Board of Assessors of Boston*, 383 Mass. 456, 466 (1981) (further citations omitted).

As discussed above, the claimant failed to produce the corroboration from the college specifically sought in our remand order. Instead, the claimant offered her own assertion that the college considers individuals who takes a three-credit course in a summer session a full-time student. The claimant’s assertion, however, is not supported by other testimonial or documentary evidence. Consequently, we do not believe that the claimant’s mere assertion constitutes “substantial evidence,” supporting the review examiner’s finding. *See McDonald v. Dir. of Division of*

¹ The review examiner noted the claimant filed a new claim for benefits that was effective May 9, 2023. *See Consolidated Finding # 8.* Review of DUA records in UI Online shows the claimant was not monetarily eligible for benefits on the claim she opened in 2023, so her eligibility for extended training benefits is limited to the 26 weeks permitted on her claim effective May 9, 2022.

Employment Security, 396 Mass. 468, 470 (1986) (a review examiner is not required to believe self-serving, unsupported evidence, even if it is uncontroverted by other evidence).

Therefore, we believe that the review examiner's credibility assessment is unreasonable in relation to the evidence presented, and we reject Consolidated Finding # 7 as unsupported by credible testimony and evidence. Because she has not shown that her training program over the summer was full-time, she did not meet the requirement under 430 CMR 9.04.(2)(b)(1).

However, the review examiner's initial decision properly concluded that, when the claimant resumed school in the fall of 2023, she did so on a full-time basis and should have been eligible for training benefits. *See* Consolidated Finding # 9. The claimant's testimony here was corroborated by a copy of her school transcript, dated May 24, 2024, and entered into evidence as part of Remand Exhibit # 6. The claimant was enrolled in 12 credits during her final semester and completed her program on December 22, 2023. *See* Consolidated Finding # 10. Inasmuch as it was a 12-credit community college program, it was considered full-time under 430 CMR 9.04(2)(b)(1).

We, therefore, conclude as a matter of law that although the claimant did not meet the requirements for training benefits during the summer of 2023, she did meet the requirements as of September 5, 2023, pursuant to G.L. c. 151A, § 30(c), and 430 CMR 9.04.(2)(b)(1).

The review examiner's decision is affirmed. The part of the review examiner's decision denying training benefits from July 10, 2023, through September 2, 2023, is affirmed. We also affirm that the claimant is eligible for further Section 30 benefits, but only for seven additional weeks, from September 3, 2023, through October 21, 2023, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 20, 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