

Substantial evidence shows that the claimant's Bachelor's Degree in Engineering from 1988 and Master's Degree in Engineering and Management from 2009 are technologically out of date when it comes to regaining employment in a field that is quickly transforming due to artificial intelligence. Held the claimant needs further training to become re-employed in his usual occupation and he is entitled to training benefits pursuant to G.L. c. 151A, § 30(c) and 430 CMR 9.03(3).

**Board of Review
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Issue ID: 0083 2570 25

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

The claimant separated from his employment and filed a claim for unemployment benefits with the DUA, effective March 17, 2024, which was approved. Subsequently, he filed an application for an extension of benefits to attend a training program (training benefits), which was denied in a determination issued on September 21, 2024. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, the review examiner affirmed the agency's initial determination and denied training benefits in a decision rendered on November 16, 2024. We accepted the claimant's application for review.

Training benefits were denied after the review examiner concluded that the claimant's chosen program was not necessary for the claimant to obtain suitable employment in view of his education and experience, and, thus, the claimant did not meet the requirements for training benefits pursuant to G.L. c. 151A, § 30(c), and 430 CMR 9.00 *et seq.* 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 did not need further training to gain employment in his technology field, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. In 1988, the claimant received a Bachelor's Degree of Engineering from the [University A] in India.

2. In 2009, the claimant received a Master's Degree in Engineering and Management from [University B].
3. In November 2019, the claimant submitted a Training Opportunities Program (TOP) Application (hereinafter 2019 TOP Application) to the Department of Unemployment Assistance (DUA) for attendance in a Doctorate of Philosophy (PhD) in Engineering and Applied Science Degree at [University C]. On this TOP Application, the claimant's listed start date of the PhD program is January 21, 2020, and the anticipated end date is listed as December 31, 2021. On this TOP Application, the University selected that the claimant will be attending the program on a full-time basis.
4. On January 30, 2020, the DUA issued a Notice of Approval, Issue Identification Number 0032 5601 21, granting the claimant benefits under Section 30 of the Law for his full-time attendance in the PhD program at [University C] from January 21, 2020, through May 7, 2020.
5. In January 2020, the claimant did attend the PhD program at [University C]. At this time, the claimant decided to attend the PhD program part-time instead of full-time. The claimant decided to attend the program part-time instead of full-time as the claimant had obtained full-time employment.
6. The claimant did not complete the PhD program in December 2021 as initially planned in connection with the claimant reducing his enrollment from full-time to part-time.
7. Prior to filing an initial unemployment claim in March 2024, the claimant worked full-time for the 1st employer, a technology company, from August 8, 2022, until March 20, 2023, as a full-time Technical Engagement Manager. In this role, the claimant was paid an annual salary of approximately \$200,000. The claimant was permanently separated from work at this employer's establishment due to a lack of work.
8. From May 2023 until November 2023, the claimant worked part-time as a consultant for another company. In this role, the claimant was paid as a 1099 worker. In this role, the claimant was paid \$150 per hour plus bonus payment eligibility.
9. The claimant filed an initial unemployment claim effective the week beginning March 17, 2024 (hereinafter 2024-01 initial unemployment claim).
10. After filing his 2024-01 initial unemployment claim, the claimant inquired with the DUA about attending the PhD program at [University C] on a full-time basis instead of a part-time basis. During this interaction, the claimant mentioned that in 2020 the claimant had received a Notice of Approval for attendance at

the PhD program. During this communication, a DUA worker advised the claimant to reapply for DUA's TOP Program.

11. The claimant can gain employment with the Bachelor's Degree in Engineering and Master's Degree in Engineering and Management that the claimant has already received.
12. The claimant has decided to attend the PhD program at [University C] as he has been struggling to gain employment, wants to make himself more marketable for potential employers, and the claimant has been struggling to obtain full-time permanent employment in connection with the industry due to artificial intelligence (AI) and automation technologies. The claimant has applied for approximately 200 jobs (as of the date of the hearing) and has not received a job offer yet (as of the date of the hearing).
13. On July 20, 2024, the claimant submitted a TOP Application (hereinafter 2024 TOP Application) to the DUA for his attendance at [University C]'s PhD program. The claimant and the university filled out their respective sections on this application.
14. On the 2024 TOP Application, [University C] reported the following information regarding the claimant's attendance at the program:

Name of Degree Program: Doctor of Philosophy in Engineering and Applied Sciences

Major or Course of Study: Industrial and Systems Engineering

Full-time or Part-time: Full-time (9 credits per semester)

Classes Start: September 6, 2024

All Classes will be completed: December 31, 2025.

Number of Credits required to
Complete the program: 66

Number of Credits this student has
already completed for this program: 30

Number of credits this student still
needs to complete for this program: 36

Credits Per Semester

<u>Period</u>	<u>Starts on</u>	<u>Ends on</u>	<u>Per Semester</u>
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Fall	9/4/24	12/18/24	9
Spring	1/21/25	5/8/25	9
Summer 1	6/9/25	7/11/25	4.5
Summer 2	7/14/25	8/15/25	4.5
Fall	9/2/25	12/17/25	9

15. On September 4, 2024, the claimant did start attending the PhD program full-time.
16. On September 21, 2024, the DUA issued a Notice of Disqualification, Issue Identification Number 0083 2570 25, denying the claimant benefits under Section 30 of the Law in connection with his enrollment at [University C]'s Doctor of Philosophy in Engineering & Applied Sciences degree program from September 4, 2024, through December 31, 2025. In response to the Notice of Disqualification, the claimant appealed.
17. The claimant currently (as of the date of the hearing) has 30 more credits to complete the PhD program. During the summer 2024, the claimant had taken 6 credits. The claimant hopes to complete the PhD program by summer 2025 and is anticipating on taking accelerated classes.
18. The claimant has paid \$9,800 out of pocket for his attendance in the PhD program's Fall 2024 semester.

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. We reject Finding of Fact # 11, for reasons which are discussed below. The last sentence in Finding of Fact # 5 is inaccurate insofar as it fails to incorporate the claimant's full explanation for enrolling part-time in 2020, which is that he could not afford the full-time tuition and then found a temporary full-time job.¹ In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, we disagree with the review examiner's legal conclusion that the claimant is ineligible for training benefits.

¹ While not explicitly incorporated into the review examiner's findings, this portion of the claimant's testimony as well as Exhibit 4 and the further testimony 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).

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 regulations that govern training benefits establish both procedures and standards for approving training programs themselves, as well as the eligibility criteria for claimants seeking to participate in such programs. *See* 430 CMR 9.01–9.0[8]. In order to qualify for training benefits, claimants must be “unlikely to obtain suitable employment based on their most recently utilized job skills.” 430 CMR 9.03(1). Further, 430 CMR 9.03 states, in relevant part:

(3) For purposes of 430 CMR 9.00, a claimant will be deemed unlikely to obtain suitable employment based on the claimant's most recently utilized job skills and in need of training to become re-employed, if any of the following apply: . . .

(b) The claimant requires training to become re-employed in his or her current occupation, because his or her present skills in that occupation are insufficient or are technologically out of date; . . .

(c) A claimant's existing skills are obsolete due to technological change or because there is currently no demand for his or her skills in his or her work search area, . . .

The record shows that the claimant was previously employed in computer information systems program management for operations and services. *See* Findings of Fact ## 7–8 and Exhibit 4.² The issue is whether the claimant needs to complete a Ph.D. program in order to become re-employed in this occupation.

Many of the findings of fact pertain to the claimant's 2019 Training Opportunities Program (TOP) application for this same program and his initial part-time enrollment in January, 2020. *See* Findings of Fact ## 3–6. There's no question that, instead of completing the Ph.D. program at the time, the claimant returned to work. *See* Finding of Fact # 5. However, the present appeal involves only his 2024 TOP application, filed on July 20, 2024. *See* Finding of Fact # 13.

Between January, 2020, and March, 2023, the claimant was able to secure three short term, full-time temporary positions, which ranged from 7–18 months in duration. *See* Finding of Fact # 7 and Exhibit 4. He found another 6-month part-time position from May to November, 2023. *See* Finding of Fact # 8. Presumably, he was able to do so based upon his prior work experience and education, including the Bachelor's Degree in Engineering and Master's Degree in Engineering and Management. *See* Findings of Fact ## 1 and 2. We can reasonably infer that the review examiner considered this work history in rendering her finding that the claimant can still gain employment with his existing Bachelor's and Master's degrees. *See* Finding of Fact # 5.

² Exhibit 4 includes screenshots from the Department of Career Services Massachusetts One Stop Employment System (MOSES). This exhibit, his work history detail contained on other screens in the MOSES system, and the claimant's testimony describe the nature of his prior work and job titles.

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). Based upon the record before us, we cannot accept this finding.

The review examiner failed to give due weight to the fact that, in the 11 months since losing that part-time position, the claimant applied to over 200 jobs without receiving a single job offer. *See Findings of Fact # 12.* During the hearing, the claimant elaborated, providing important insight into the recent trend in his field of work. As he explained, the field is undergoing a technological transformation. The emerging technology of artificial intelligence (AI) is automating operations and services, making them more efficient. Working with AI, however, demands formal training in data science and machine learning.³ While applying for jobs, he received consistent feedback from several employers that only those candidates with such training are being hired, and those who do not have it will soon be laid off. He further testified that completing this Ph.D. program is his fastest path to acquiring those skills.

Thus, the weight of the evidence shows that the claimant's existing credentials, including the Bachelor's Degree from 1988 and the Master's Degree from 2009, have effectively become obsolete. Despite his aggressive work search efforts, he cannot find work in his field. The rapid emergence of AI has rendered the claimant's present skills technologically out of date, and he needs the requested training to become re-employed in his usual occupation.

We, therefore, conclude as a matter of law that the claimant is entitled to training benefits pursuant to G.L. c. 151A, § 30(c) and 430 CMR 9.03(3), while enrolled in his Ph.D. training program.

The review examiner's decision is reversed. The claimant is entitled to receive an extension of up to 26 times his weekly benefit rate and a waiver of the availability and work search requirements while attending this program from the week beginning September 1, 2024, through December 20, 2025, if otherwise eligible.

³ During the hearing, the claimant explained that machine learning is one of the techniques that AI uses to detect patterns. At its foundation is data science. On top of the data science are models that detect patterns, which are able to automate a transaction or respond to a customer query without human intervention.

BOSTON, MASSACHUSETTS
DATE OF DECISION - February 4, 2025



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.

AB/rh