



THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT  
BOARD OF REVIEW

Charles F. Hurley Building • 19 Staniford Street • Boston, MA 02114  
Tel. (617) 626-6400 • Office Hours: 8:45 a.m. to 5:00 p.m.

## BOARD OF REVIEW DECISION

BR-102996 (April 23, 2007) -- Although claimant did not qualify for G.L. c. 151A, sec. 30(c) training benefits, because her journalism program extended beyond the one-year cap under regulations in effect at the time, she remained eligible for regular unemployment benefits. Her attendance at school did not render her unavailable for work.

On April 20, 2007, in Boston, Massachusetts, the Board reviewed the written record and a recording of the testimony presented at the hearing held by the Commissioner's representative on January 25, 2007.

On March 13, 2007, the Board allowed the claimant's application for review of the Commissioner's decision in accordance with the provisions of section 41 of Chapter 151A of the General Laws, the Unemployment Insurance Law (the Law).

The Board has reviewed the entire case to determine whether the decision of the Commissioner was founded on the evidence in the record and was free from any error of law affecting substantial rights.

The appeal of the claimant is from a decision of the Commissioner which concluded:

The claimant is not eligible to receive eighteen (18) weeks of Section 30(c) extended benefits beyond the expiration of her regular and regularly extended benefits. She is ineligible because her program of study will not be completed within one (1) year in accordance with Section 30(c) of MGL Chapter 151A and 430 CMR 9.05(2)(c).

According to 430 CMR 9.05(2)(c), training programs must: "Be completed within one year, except that this time limit may be extended to a maximum of one and one-half years if the program includes a combination of basic skills and vocational training and the basic skills component does not exceed a total of six months."

On September 5, 2006, the claimant began attending classes full-time at Suffolk University in Boston, Massachusetts. The claimant enrolled for thirteen (13) semester credit hours of course work toward a Bachelor's degree in communication and journalism. At that time, the claimant expected to graduate in September, 2008. Accordingly, the period between September 2006, and September 2008, is twenty-four (24) months and is, therefore, disqualifying for receiving Section 30(c) extended benefits.

The claimant is not available for work within the meaning of Section 24(b) of MGL Chapter 151A, because she has no appreciable history of working full-time while participating in school full-time for a sustained period; and because the claimant is not willing to accept an offer of full-time employment if the work schedule conflicts with the claimant's school schedule.

The claimant worked full-time while attending school full-time only between September 5, 2006, and October 29, 2006, or fifty-five (55) days out of a single 102 day semester ending on December 15, 2006. Therefore, the claimant is subject to disqualification and she is denied regular unemployment benefits under Section 24(b) of the Law.

The claimant is denied extended benefits under Section 30(c) of the Law that would be paid to the claimant for eighteen (18) weeks after the expiration of her regular and regularly extended benefits.

The claimant is denied regular unemployment benefits under Section 24(b) of the Law for the week ending November 4, 2006, and for an indefinite number of weeks thereafter; until she meets the requirements of the Law. If, at a later date, the claimant believes there is a change in the facts on which this decision is based, she may file another claim for determination of her rights to benefits thereafter.

**Sections 30 and 24 of Chapter 151A of the General Laws and 430 Code Mass. Regs. § 9.06(5)** are pertinent and provide, in part, as follows:

**Section 24.** An individual, in order to be eligible for benefits under this chapter, shall-

(b) Be capable of, available, and actively seeking work in his usual occupation or any other occupation for which he is reasonably fitted;...

An individual who is certified as attending an industrial retraining course or other vocational training course as provided under section thirty shall be deemed to be available for work under clause (b) of the first paragraph of this section.

**Section 30.** Total benefits for year; industrial or vocational retraining; solvency account charge; trade readjustment allowance

(c) If in the opinion of the commissioner, it is necessary for an unemployed individual to obtain further industrial or vocational training to realize appropriate employment, the total benefits which such individual may receive shall be extended by up to eighteen times the individual's benefit rate, if such individual is attending an industrial or vocational retraining course approved by the commissioner; provided, that such additional benefits shall be paid to the individual only when attending such course and only if such individual has exhausted all rights to regular and extended benefits under this chapter and has no rights to benefits or compensation under this chapter or any other state unemployment compensation law or under any federal law; provided, further, that such extension shall be available only to individuals who have applied to the commissioner for training no later than the fifteenth week of a new or continued claim but the commissioner shall specify by regulation the circumstances in which the 15 week application period shall be tolled because of the individual's need to address the physical, psychological and legal effects of domestic violence; provided that the claimant shall begin training in the first available program which is a reasonable distance from the claimant's residence, as determined by the commissioner; provided, further, 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; and provided, further, that any benefits paid to an individual under the provisions of this paragraph which would not be chargeable to the account of any particular employer under the provisions of section fourteen shall be charged to the solvency account....

**430 Code Mass. Regs. § 9.05: Approval of Training Programs (Courses)**

(2) Training programs must meet certain measurable standards as set forth in 430 CMR 9.05(2)(a) through (e):

(c) Be completed within one year, except that this time limit may be extended to a maximum of 1½ years if the program includes a combination of basic skills and vocational training and the basic skills component does not exceed a total of six months.

The Commissioner's representative held a hearing on January 25, 2007. The claimant was present. The Commissioner's representative then issued the following findings of fact:

1. On September 5, 2006, the claimant began attending classes full-time at Suffolk University in Boston, Massachusetts. The claimant enrolled for thirteen (13) semester credit hours of coursework toward a Bachelor's degree in communication and journalism. At that time, the claimant expected to graduate in September, 2008.
2. From May 17, 2006, until October 29, 2006, the claimant worked full-time as a restaurant manager until she was laid off due to lack of work.
3. Between September 5, 2006, and October 29, 2006, the claimant worked full-time while attending school full-time.
4. On November 1, 2006, the claimant opened a new claim for unemployment insurance benefits, effective for the week ending November 4, 2006.
5. Approximately one (1) week after November 1, 2006, the claimant received written information regarding her rights and obligations for receiving unemployment benefits, including training benefits.
6. On November 27, 2006, the claimant applied for Section 30(c) extended benefits.
7. The claimant's 2006 fall semester ended on December 15, 2006.
8. The claimant has no medical restriction hat [sic] prevents her from working full-time.
9. The claimant is not willing to accept an offer of full-time employment if the work schedule conflicts with the claimant's school schedule.
10. The claimant is seeking full-time or part-time employment with restaurants as a manager, bartender or waitress, if the work schedule is flexible enough to accommodate the claimant's school schedule.
11. The claimant reviews classified newspaper ads and searches the Internet on three (3) days each week seeking employment.
12. The claimant makes contact with potential employers on two (2) days each week.

After reviewing the record, the Board adopts the findings of fact made by the Commissioner's representative as being supported by substantial evidence and concludes that the decision is based on substantial evidence and is free from any error of Law affecting substantial rights.

The Board concurs with the conclusions of the Commissioner's representative that the training program does not meet the criteria for approval under section 30(c) of the Law cited above and 430 Code of Mass. Regs. §9.05(2), also cited above. The claimant will not complete the school program within one year. The claimant is not entitled to extended benefits under section 30(c) of the Law.

The claimant's school attendance, however, does not preclude her from meeting the eligibility requirements of section 24(b) of the Law cited above. Under G. L. c. 151A, § 24(b), in order to be eligible for benefits the claimant must show that she is capable of, available and actively seeking work.

The claimant was laid off from her employment as a restaurant manager on October 29, 2006. The claimant established that prior to her separation from work, she was attending school full-time while working full-time. The claimant's schooling has not prevented her availability or active search for full-time work. She has sought full-time and part-time positions in the restaurant industry, which is commonly known to have work available on various shifts, days and evenings. The claimant is capable of working full-time with no medical restriction. Accordingly, the claimant meets the requirements of section 24(b) of the Law.

The Board modifies the Commissioner's decision. The claimant is entitled to regular benefits for the week ending November 4, 2006, and subsequent weeks, if otherwise eligible. The claimant is not entitled to an extension of benefits under section 30(c) of the Law.

**BOSTON, MASSACHUSETTS**  
**DATE OF MAILING – April 23, 2007**

/s/  
John A. King, Esq.  
Chairman

/s/  
Donna A. Freni  
Member

/s/  
Sandor J. Zapolin  
Member

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS DISTRICT COURT**  
**(See Section 42, Chapter 151A, General Laws Enclosed)**

**LAST DAY – May 23, 2007**

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