



THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT  
BOARD OF REVIEW

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WORKFORCE DEVELOPMENT

**BOARD OF REVIEW  
DECISION**

JOHN A. KING, ESQ.  
CHAIRMAN

DONNA A. FRENI  
MEMBER

SANDOR J. ZAPOLIN  
MEMBER

BR-106513 (May 5, 2008) -- Because the externship component of claimant's community college phlebotomy program brought the average credit hours up to 13.3 hours per week, more than the minimum 12 hours required under 430 C.M.R. 9.05(2)(b)(1), claimant qualified for extended benefits under G.L. c. 151A, § 30(c).

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Division of Unemployment Assistance (DUA) to deny an extension of her benefits following the claimant's enrollment into a program that had already been approved by the DUA Training Opportunities Program ("TOP") Unit under G.L. c. 151A, § 30(c), but whose approval was subsequently rescinded by the TOP Unit. We review pursuant to our authority under G.L. c. 151A, § 41, and reverse.

Extended benefits were denied after the review examiner determined that the program in which the claimant had enrolled did not meet the required criteria for approval. As there were no material facts in controversy in this appeal, and the sole question presented was an issue of law, we took the case for review on the record. Our decision is therefore based upon the recorded testimony and evidence from the DUA hearing, the DUA review examiner's decision, and the claimant's appeal.

The claimant was separated from employment on June 21, 2007. She was approved for unemployment benefits and submitted a completed Training Opportunities Program ("TOP") application for a phlebotomy program at Springfield Technical Community College, which entitled her to an extension of benefits under M.G. L. c. 151A, § 30. After the claimant had already obtained approval and enrolled in the course, the TOP Unit rescinded the approval in a redetermination dated January 23, 2008. The claimant appealed that redetermination to the DUA hearings department. Following a hearing on the merits, in which both the claimant and the DUA TOP Unit participated, a DUA review examiner affirmed the DUA's redetermination and denied the claimant the extension of benefits in a decision rendered on March 7, 2008.

The issue on appeal is whether the community college course meets the requirements of 430 CMR 9.05, and, therefore, qualifies the claimant for extended unemployment benefits under G.L. c. 151A, § 30, notwithstanding the TOP Unit's characterization of it..

### Findings of Fact

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

1. On 6-21-07, the claimant filed a claim for unemployment benefits following separation from employment from [Employer]. She was determined to be eligible and collected unemployment benefits through the mail.
2. On 7-31-07, the claimant submitted a completed Training Opportunities Program Application for the Principles and Practices of Phlebotomy program at Springfield Technical Community College.
3. The application indicated that the start date was 9-10-07 and the completion date was 12-10-07. It indicated the program was two days per week, twenty class hours per week, and the total number of weeks was listed as fourteen.
4. Based on information provided by the college at some unknown point in the past, the program was listed in the Moses computer program as approved for Section 30.
5. On 8-28-07, the Training Opportunities Program office sent the claimant notification of approval for the vocational training. Said approval included extension of benefits if the claimant was still in the approved training when her regular unemployment benefits were exhausted.
6. The claimant did not enter the program on 9-10-07 because the course was already filled to capacity.
7. On 10-19-07, the claimant submitted a second completed Training Opportunities Program Application for the same program, i.e. Principles and Practices of Phlebotomy program at Springfield Technical Community College.
8. The application indicated that the start date was 1-22-08 and the completion date was 5-5-08. It indicated the program was two days per week, twenty class hours per week, and the total number of weeks was listed as sixteen.

9. On 10-24-07, the Training Opportunities Program office sent the claimant notification of approval for the vocational training. Said approval included extension of benefits if the claimant was still in the approved training when her regular unemployment benefits were exhausted.
10. On or about 1-3-08, another claimant/student who was also applying for Section 30 approval for the same program, contacted the Training Opportunities Program office about the start date for the program. That individual questioned her/his eligibility because the program was not full-time.
11. The Training Opportunities Program office looked into the matter and contacted the school to get additional information. Based on information provided by the school, it was concluded that the program was part-time, Monday nights, 5:00 pm to 9:00 pm and Saturdays, 8:30 am to 2:00 pm.
12. The program also includes three weeks of externship, which will be forty hours per week.
13. On 1-23-08, the Training Opportunities Program office notified the claimant that she would not be entitled to benefits under Section 30 while attending the phlebotomy program. She would be eligible for any remaining regular benefits, but not for an extension of benefits under Section 30. Said determination indicated that new information was received and the Section 30 approval had been rescinded.
14. The new information that was referenced to was the part-time status of the program.
15. On 1-28-08, that [sic] Assistant Vice President of the college wrote a letter regarding the program at issue. She listed 4-10 hours of classroom instruction per week, for a total of 79.5. She indicated the number of weeks for the program was fifteen. She also listed 120 hours of clinical placement at 40 hours/week for three weeks. She indicated the average hours per week were 13.3.

#### Ruling of the Board

The Board adopts the DUA review examiner's findings of fact. In so doing, we deem them to be supported by substantial and credible evidence. However, we reach our own conclusions of law, as are discussed below.

G.L. c. 151A, § 30(c) provides, in pertinent part, as follows:

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 . . . 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 . . . benefits under this chapter . . .

The DUA has promulgated regulations, which set forth criteria that a training course must meet in order for a claimant to be approved for an extension of benefits. This includes 430 CMR 9.05(2)(b)(1), which provides, in pertinent part, as follows:

Training programs must meet certain 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 . . .

In the instant case, the DUA TOP Unit twice approved an extension of benefits for the claimant while enrolled in the Principles and Practices of Phlebotomy program (the “PPP program”) at Springfield Technical Community College (“STCC”), a community college operated by the Commonwealth. The claimant began taking classes in the PPP program at STCC on January 22, 2008. However, on January 23, 2008 the TOP Unit issued a determination reversing its prior approval.

The DUA rescinded its approval on the grounds that the PPP program did not meet the requirement of a minimum of 20 hours of supervised classroom training per 430 CMR 9.05(2)(b).

Upon review, we believe that the PPP program satisfies the criteria of 430 CMR 9.05(2)(b)(1), and that the claimant’s enrollment in this program, therefore, qualifies her for extended benefits under § 30(c).

The Massachusetts Appeals Court has provided guidance to the proper interpretation of whether or not community college programs satisfy the requirements of § 30(c), and 430 CMR 9.05(2)(b)(1). In Figueroa v. Dir. of Dept. of Labor and Workforce Development, 54 Mass. App. Ct. 64 (2002), the court found that a student who had initially enrolled in 12 credit hours at one of the Commonwealth’s community colleges, but who subsequently dropped one course (leaving her enrolled for only 9 credit hours), was nevertheless eligible for extended benefits under § 30(c). Because the program of study in Figueroa required at least 20 to 30 additional [computer] lab hours each week, the Appeals Court held that those additional hours could be considered towards meeting the requirements of § 30(c) and 430 C.M.R. 9.05(2)(b)(1). Id. at 67.

In its review of the regulation and its purpose, the Court noted that “the twelve credit-hour proviso [for community colleges] was created to allow the commissioner to approve programs that, although valuable and rigorous, would be unlikely to meet the generally applicable twenty-hour requirement. The credit-hour proviso thus provides for an alternative, not an exclusive, basis for approval of courses provided by colleges, universities, or community colleges.” *Id.* at 68, n.7.

The *Figueroa* Court examined amendments made to the regulation in 1997 and concluded that the DUA “amended the relevant regulation to relax the rigor of the twelve-credit requirement, drawing special attention to the last pertinent phrase of 430 CMR 9.05(2)(b)(1): “if the program is offered by a community college ..., [the 20-hour] requirement shall be met if the program provides a minimum of 12 credits each semester, *or the equivalent...*” *Id.* at 69-70 (emphasis in original). Further, the Court found the amendment was enacted to provide “elasticity” to the regulation’s previous fixed and rigid eligibility criteria, because “many college and university programs likely to assist people seeking new skills could not be identified simply by looking at the number of credit hours those programs produced.” *Id.* at 71-72.

As the DUA review examiner’s findings indicate, the PPP program at issue in this appeal encompasses 79.5 hours of classroom instruction over 15 weeks. Additionally, program participants are required to complete 120 hours of clinical placement (40 hours a week for three weeks). Thus, enrollees must complete 199.5 hours to satisfy the requirements of the PPP program. Over a 15-week period, this averages 13.3 hours per week.

We conclude that this combination of classroom instruction and clinical placement is “the equivalent” of 12 credit-hours each semester within the meaning of 430 CMR 9.05(2)(b)(1).

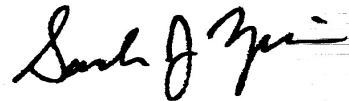
The DUA review examiner’s decision is reversed. The claimant is eligible for up to eighteen weeks of extended benefits, to be applied retroactively, for the period in which she is enrolled in the Principles and Practices of Phlebotomy program at Springfield Technical Community College, commencing when the claimant exhausted all regular benefits.

We leave it to the DUA to determine the effect of this decision on other applications that may have been submitted to the TOP Unit by claimants seeking to enroll in the PPP program.



John A. King, Esq.  
Chairman

**BOSTON, MASSACHUSETTS**  
**DATE OF MAILING - May 5, 2008**



Sandor J. Zapolin  
Member

Member Donna A. Freni did not participate in this decision.

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

**LAST DAY TO FILE AN APPEAL IN COURT- June 6, 2008**