



THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
BOARD OF REVIEW

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**BOARD OF REVIEW
DECISION**

JOHN A. KING, ESQ.
CHAIRMAN

DONNA A. FRENI
MEMBER

SANDOR J. ZAPOLIN
MEMBER

BR-107628 (Feb. 13, 2009) -- Claimant applied for sec. 30(c) training within the 15-week deadline, but could not enroll immediately because DUA's Career Center was out of training funds. When funding became available, he was told to re-apply. Claimant's first application is sufficient to meet the statutory deadlines.

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 extended unemployment benefits. We review pursuant to our authority under G.L. c. 151A, § 41 and reverse.

Benefits were denied after the review examiner determined that the claimant failed to submit a timely application for training under G.L. c. 151A, § 30(c). 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 claimant applied for an extension of unemployment benefits, but was disqualified in a determination issued by the agency on July 14, 2008. He appealed the determination to the DUA hearings department. Only the claimant attended the hearing on the merits. Subsequently, a DUA review examiner affirmed the initial determination in a decision rendered on August 15, 2008.

The issue on appeal is whether the claimant submitted an application for training no later than the 15th compensable week of his unemployment claim.

Findings of Fact

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

1. The claimant filed a new claim for benefits on 2/6/08 having been permanently separated from employment.
2. The claimant received his first payment of UI benefits for the week-ending 3/8/08. He received his [fifteenth] UI payment the week ending 6/14/08.
3. The claimant received, read and understood the information on training in the Guide to Benefits and Employment Services. The claimant also attended a Career Center Seminar during which training was discussed including the need to apply for training by the [fifteenth] compensable week of the claim to qualify for extended benefits under Section 30. The claimant understood this requirement.
4. The claimant submitted a Training Opportunities Program Application on 6/6/08, during the 13th compensable week of the claim. The training facility is Parker Pro Driving School and the program is CDL class A. The program was starting on 6/16/08 [and] ended six weeks later during the week ending 7/26/08.
5. The claimant [would] attend class twenty hours a week and he would attend training five days a week. The annual placement rate into training related jobs is 80%.
6. The claimant did not start the training course on 6/16/08 because The Career Place/Career Center in Woburn, MA was out of training funds. The claimant could not attend the training program without the funding. He is a single parent with one child. The claimant waited until funding was available and registered for the same program, CDL Class 2, with the same training provider. The new training start date was 7/14/08 and training course would end on 8/14/08.
7. Since the claimant did not [attend] training on 6/6/08, he was told by a Section 30 representative that he needed to submit a new 1622, Training [Opportunities] Program Application with training start and end date. The claimant submitted the new training program application on 6/30/08, during the [eighteenth] compensable week of the claim.
8. On 7/14/08, the claimant was issued a Determination of Eligibility for Training Opportunity Benefits informing him that he was approved for a waiver of the work search requirement and the requirements to accept suitable work. However, he was not entitled to an extension of benefits of up to eighteen times his benefit rate because he failed to apply by the fifteenth compensable week of the claim.

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 . . . provided, further, that such extension shall be available only to individuals who have applied . . . no later than the fifteenth week of a . . . claim

Additionally, the agency has promulgated regulations for qualifying for training benefits under G.L. c. 151A, § 30(c).

430 CMR 9.01 states, in relevant part, as follows:

M.G.L. c. 151A, § 30(c) allows claimants to receive Unemployment Insurance (UI) benefits while enrolled in approved training. The purpose of 430 CMR 9.00 is to establish procedures and interpret the standard for approval of training programs (courses) and the eligibility of claimants to participate in such programs. In addition, 430 CMR 9.00 describe the conditions under which a claimant may be eligible to receive an extension of benefits . . . The 18 week extension is available only to those claimants who have applied to the commissioner for training no later than the 15th compensable week of the claim.

430 CMR 9.03 provides, in relevant part, as follows:

The following words and phrases shall have the following meanings, unless otherwise clearly indicated by the context of 430 CMR 9.00:

Applied to: a claimant has submitted the required application for training as set forth in 430 CMR 9.06(1).

430 CMR 9.06(1) states:

Application for approval under M.G.L. c. 151A, § 30(c), shall be made in writing, on a form provided by DET. A claimant who submits the completed form to DET shall be deemed to have applied to DET for training for the purpose of 430 CMR 9.00. Submission of additional documents shall not be required for making the application, but may be required before a determination is made.

Finally, 430 CMR 9.07(1), in relevant part, provides as follows:

[A] claimant must begin training prior to the expiration of the benefit year

The claimant submitted a completed written application for G.L. c. 151A, § 30(c) benefits on the proper agency form during the 13th compensable week of his claim. Having complied with the statutory and regulatory deadline requirements, his training program was approved. Although his training program start date was postponed until the Career Center released the funds, it would have begun before the expiration of his benefit year.

We conclude that the claimant's G.L. c. 151A, § 30(c) application fully complied with the letter of the law. The Career Center delayed in paying for the program due to a lack of training funds. The DUA thereupon required the claimant to submit a second application outside the fifteen-week eligibility period. However, in our view, the first application was sufficient. The course that he was asked to file a new application for, which began in July, was identical to the one that he filed his first application for in June. Therefore, we see the first application as controlling with regard to the fifteen-week application deadline, and on that basis the claimant's application must be deemed to have been timely.

This ruling is in harmony with prior Massachusetts court rulings regarding extended unemployment benefits. *See Haefs v. Dir. of Div. of Employment Security*, 391 Mass. 804 (1984) (in light of the remedial purpose of G.L. c. 151A, claimant's good faith effort to comply with the extended benefit requirements of § 30A was sufficient.). *See also Figueroa v. Dir. of Dept. of Labor and Workforce Development*, 54 Mass. App. Ct. 64, 68 n.7 (2002), where the Massachusetts Appeals Court retroactively applied a change in agency regulations to approve § 30(c) benefits, stating, "In the last analysis, a regulation, like a statute, must be construed in a manner designed to advance the regulation's manifest goals."

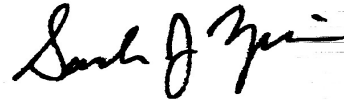
We, therefore, conclude as a matter of law that the claimant is entitled to extended benefits under G.L. c. 151A, § 30(c).

The DUA review examiner's decision is reversed. The claimant is entitled to additional benefits under G.L. c. 151A, § 30(c) for the duration of the period that he was enrolled in this training program, and for subsequent weeks, if he was otherwise eligible.



John A. King, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF MAILING - February 13, 2009



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 – March 16, 2009