THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
BOARD OF REVIEW

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Tel. (617) 626-6400 • Office Hours: 8:45 a.m. to 5:00 p.m.

BOARD OF REVIEW DECISION

BR-115740 (Nov. 17, 2010) -- A majority of Board members held that the claimant may not be disqualified from receiving extended benefits by the rule under DUA regulation 430 CMR 9.06, on the ground that he applied for these training benefits after his benefit year expired. G.L. c. 151A, sec. 30(c), as amended in July, 2009, requires the tolling of such application deadlines during a period when extended or emergency unemployment benefits are being funded in whole or in part by the federal government.

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 training benefits to the claimant following his separation from employment. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

Following the claimant's separation from employment, he began receiving regular unemployment benefits with a benefit year expiration date of August 8, 2009. When these regular benefits were exhausted, he received federally funded extended benefits and emergency unemployment benefits. On April 26, 2010, the claimant submitted an application for training benefits under G.L. c. 151A, § 30(c), ("training benefits"), which would have included 26 additional weeks of benefits and a waiver of the obligation to search for work while he attended a training program. In a determination dated May 17, 2010, the DUA approved the waiver of the work search requirement but found the claimant ineligible for the 26 weeks of training benefits. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by the claimant, the review examiner affirmed the agency's initial determination and denied training benefits in a decision rendered on September 22, 2010. We accepted the claimant's application for review.

Training benefits were denied after the review examiner determined that the claimant had submitted his application after the expiration of his benefit year, as required under G.L. c. 151A, § 30(c), and 430 CMR 9.00. 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 on appeal is whether the DUA's asserted benefit year ending date limitation on the submission of training applications, as set forth in 430 CMR 9.06, is enforceable against a claimant who filed his application after the expiration of his benefit year but during a time when a federal benefit extension was in effect, which, under G.L. c. 151A, § 30(c), requires the tolling of all limits on application deadlines.

Findings of Fact

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

1. The claimant filed an unemployment claim on 8/15/08. The benefit year of his claim ended 8/8/09.

2. The claimant applied for a Section 30 training opportunity on 4/26/10. The claimant applied for approval for the Liberal Arts Associate Degree program offered at Northern Essex Community College.

3. The claimant had earned 33 credits out of 62 credits to complete the program by the time he applied for Section 30.

4. The college indicated that the claimant was going to take six credit courses in the summer 2010 sessions offered at the college, 12 credits in the fall 2010 semester, and 12 credits for the spring 2010 semester.

5. The claimant is currently attended [sic] classes five days a week and will complete his education by 5/16/2011.

6. The DUA TOPS Unit issued a determination to the claimant which waived the claimant's work-search requirements under Section 24(b) of the Law, but denied the claimant an extension of benefits of up to twenty-six times his benefit rate because the training did not begin prior to the expiration of his benefit year.

7. The claimant appealed the determination and submits that because he had attended classes in 2009, this should be taken into consideration. (See claimant's appeal, exhibit 3A)

Ruling of the Board

The Board adopts the 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.

The claimant submitted his application for training benefits in April, 2009, some eight months after his benefit year had expired. The application was denied on the grounds that, as it had been filed after the end of his benefit year, it was not timely[1].

The claimant had sought these training benefits under G.L. c. 151A, § 30(c), which, as written both at the time of his application and today, provides 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 by up to 26 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*; *provided, however, that such circumstances shall include* an individual's need to address the physical, psychological and legal effects of domestic violence, as well as *any period in which economic circumstances permit the provision of extended benefits or any other emergency benefits funded in whole or in part by the federal government*; … An individual eligible to receive emergency unemployment compensation, so-called, under any federal law, shall not be eligible to receive additional benefits under this section for each week the individual receives such compensation. (Emphasis added.)
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> G.L. c. 151A, §30(c), as amended by Stat. 2009, c. 30, §§ 1 and 2.

Even a cursory reading of the above quoted passage reveals that it nowhere contains any reference to a benefit year ending date deadline on the submission of training applications.[2] To

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[1] At the DUA hearing, the claimant testified that he did not apply sooner, because he believed he had to exhaust all of his regular and extended benefits before he was eligible to apply for training benefits. Given the statutory language, under G.L. c. 151A, § 30(c), his belief was not unreasonable.

[2] A related benefit year time limitation had existed in G.L. c. 151A prior to 1958, when amendments to the predecessor of the present §30(c) removed it. Under the pre-1958 law, the maximum number of training benefits was 10 weeks, which when added to the then-maximum of 26 weeks of regular State benefits would total to 36 weeks, and the statute then not unreasonably required that a claimant's additional weeks of training benefits had to be "receive[d] during his benefit year". G.L. c. 151A, §30, as amended by Stat. 1956, c. 719, §6. In the 1958 amendments, the maximum number of weeks of training benefits was lengthened to 18, and the benefit year ending

be sure, there is a time limit in this section, but it is much earlier than the end of a claimant's benefit year, and it must be tolled in a number of conditions, one of which is directly on point to the facts of this appeal.

As a general rule, G.L. c. 151A, § 30(c), requires that claimants file their applications for training benefits within the first 15 compensable weeks of their claim. However, the statute provides that when the economy is experiencing a deep enough recession to trigger extended benefits or other federal emergency benefit extensions, the 15-week application deadline "*shall be tolled*." This tolling during federal benefit extension periods is mandatory rather than permissive, and it is stated without any temporal qualification. There are no other deadlines in the statute relating to the timing of applications for, or receipt of, training benefits.

The review examiner's denial of the claimant's training application was based exclusively upon a DUA regulation. Specifically, 430 CMR 9.06, provides, in pertinent part, as follows:

> (3) The 15-week application period shall be tolled or extended, except that *in no event shall the 15 week period be tolled or extended beyond the claimant's benefit year*, if any of the following conditions occur:
>
> (d) If economic circumstances permit the provision of extended benefits or any other emergency unemployment benefits funded in whole or in part by the federal government, the 15 week application period shall be extended *until the end of the claimant's benefit year*. (Emphasis added.)

In April, 2010, when the claimant applied for training benefits, Congress was funding both extended benefits and emergency unemployment benefits. *See* Continuing Extension Act of 2010, P.L. No. 111-157, enacted April 15, 2010; U.S. Department of Labor Unemployment Insurance Program Letter No. 04-10, Change 2 (April 16, 2010). Therefore, circumstances at the time of his application required the tolling of the 15-week application deadline.

To be sure, the DUA's regulations at 430 CMR 9.06(3)(d) also provide for a tolling of the 15 week deadline when a federal benefit extension is in effect. However, they qualify that tolling

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date limitation was eliminated. *See* Stat. 1958, c. 437, §2. At the time this legislation was pending, Massachusetts was in the midst of a severe economic recession and Governor Furcolo was seeking a 13 week Federal benefit extension. It is clear from the Governor's statement of record on the Senate bill that was subsequently enacted as Chapter 437 that, in the context of a total benefit duration which as contemplated in the proposed legislation and sought-after Federal extension would have summed to 57 weeks (26 weeks of regular benefits, plus 13 weeks of Federal benefits, plus 18 weeks of training benefits), the elimination from the language of §30 of the benefit year ending date limitation on when these benefits could be received was not a mere scrivener's error. Rather, striking this limitation from the statute was a necessary change, for the very simple reason that while a benefit year ends 52 weeks after the claimant first begins collecting benefits, unemployed workers would potentially be able to collect benefits for up to 57 weeks. *See* Statement of Governor Foster Furcolo March 31, 1958, concerning Senate 660, amending G.L. c. 151A. In light of the legislative history of this section, we think the notion that DUA has somehow retained the implied right to set via regulation a benefit year ending limitation on any aspect of the Section 30 retaining program lacks both logic and persuasiveness.

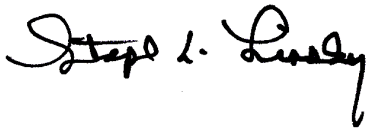
beyond what is authorized by the statute by limiting the tolling to the end of the claimant's benefit year. We recognize that "'a properly promulgated regulation has the force of law … and must be accorded all the deference due to a statute…'" Ciampi v. Commissioner of Correction, 452 Mass. 162, 166 (2008); *quoting* Borden, Inc. v. Commissioner of Public Health, 388 Mass. 707, 723, *cert. denied sub nom*, Formaldehyde Inst., Inc. v. Frechette, 464 U.S. 936 (1983).

However, deference does not mean abdication. Ciampi, 452 Mass. at 166. Because the regulation in this instance conflicts with the statute and deprives the claimant of a window of time within which he may file his application, which the statute expressly confers when federal benefit extensions are in effect, we conclude that it cannot be enforced against the claimant. *See* Duarte v. Commissioner of Revenue, 451 Mass. 399, 408 (2008) (Appellate Tax Board, a G.L. c. 30A tribunal, while lacking the "inherent common law authority" to declare a Departmental regulation to be void on its face, could permissibly rule that the regulation was invalid as applied to a party and could not be enforced against him where the regulation in question conflicted with the underlying statute and deprived the party of rights conferred to him by the statute); Demoranville v. Commissioner of Revenue, 457 Mass. 30, 36 (2010) (Appellate Tax Board has power to declare a DOR statute unconstitutional as applied to a party).

We conclude as a matter of law that the denial of training benefits to the claimant because he submitted his application after the benefit year is unlawful under G.L. c. 151A, § 30(c).

The review examiner's decision is reversed. The claimant is eligible for training benefits, under G.L. c. 151A, § 30(c).

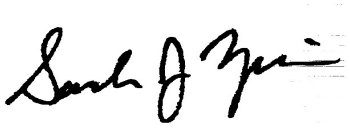
John A. King, Esq.
Chairman



Stephen M. Linksy, Esq.
Member

*** DISSENT ***

I disagree that there is a conflict between the statute and the DUA regulation on tolling of the G.L. c. 151A, § 30(c), application deadline. The DUA's regulation is a good faith interpretation of the statutory language. Such interpretation is entitled to substantial deference. Manning v. Boston Redevelopment Authority, 400 Mass. 444, 453 (1987) ("we give substantial deference to the construction placed on a statute or an ordinance by the agency charged with its administration."). I would accordingly affirm the review examiner's decision.



BOSTON, MASSACHUSETTS Sandor J. Zapolin
DATE OF MAILING - November 17, 2010 Member

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 – December 17, 2010

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