**Where the DUA gave the claimant erroneous information about the date her section 30 application was due, and she submitted her application within the time frame she was given, her application was timely.**

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**Issue ID:** **0014 4812 87**

**BOARD OF REVIEW DECISION**

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Rachel Zwetchkenbaum, a review examiner of the Department of Unemployment Assistance (DUA), denying the claimant’s application for benefits to participate in a training program. We review, pursuant to our authority under G. L. c. 151A, § 41, and reverse.

The claimant had filed a claim for unemployment benefits in March 2014, which was effective March 9, 2014. This claim was eventually approved in a decision issued on June 16, 2014. The claimant filed an application for benefits to participate in training on October 9, 2014, which was denied by the agency as untimely. The claimant appealed to the DUA Hearings Department. Following a hearing on the merits, the review examiner affirmed the agency’s initial determination in a decision rendered on January 23, 2015. The claimant sought review by the Board, which denied the appeal, and the claimant appealed to the District Court, pursuant to G.L. c. 151A, § 42.

On July 1, 2015, the District Court ordered the Board to obtain further evidence and render new consolidated findings of fact regarding the timeliness of the claimant’s application for training benefits. Consistent with this order, we remanded the case to the review examiner. The claimant attended the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact. Our review is based upon the entire record, including the testimony and exhibits from the initial and remand hearings, the claimant’s appeal, the District Court’s Order, and the consolidated findings of fact.

The issue before the Board is whether the review examiner’s initial conclusion that the claimant submitted an untimely application for training benefits without good cause is supported by substantial and credible evidence and free from error of law, where the consolidated findings after remand indicate that the DUA gave the claimant inaccurate information about the date her application was due.

Findings of Fact

The review examiner’s consolidated findings of fact and credibility assessments, which were issued following the District Court remand, are set forth below in their entirety:

1. The claimant filed a claim in March 2014 and received an effective date of March 9, 2014.
2. The claimant’s would-be fifteenth compensation was the week beginning June 22, 2014.
3. The claimant was originally denied unemployment benefits when she applied.
4. On June 16, 2014, the claimant received a Notice of Approval of benefits from DUA. The claimant then spoke to DUA about a Section 30 application and was informed that she needed to have the Section 30 application completed by the week beginning June 22, 2014.
5. Because the claimant’s original denial determination was reversed, the claimant’s new fifteenth compensable week (in relation to Section 30) was the week ending October 4, 2014.
6. The claimant was not informed that a Section 30 application needed to be sent to DUA by the week ending October 4, 2015.
7. The claimant then began looking for an educational program to attend without knowing when the Section 30 application would be due.
8. During this time the claimant was experiencing severe anxiety and depression because of her personal circumstances with her daughter and the claimant’s need to look for housing.
9. The claimant found one program that she was interested in applying to, but then changed her mind and decided to apply to another educational program.
10. In early fall 2014, the claimant received a letter from DUA indicating that her Section 30 application was due on October 14, 2014.
11. The claimant was never informed that her Section 30 application was due by the week ending October 4, 2014.
12. The claimant submitted her Section 30 application on October 9, 2014.
13. The claimant thought that she had submitted her Section 30 application timely.
14. On November 18, 2014, the claimant started a full-time training program for telephone operating services.
15. On November 26, 2014, the claimant stopped attending the program and took a leave of absence.
16. On November 7, 2014, the claimant received a Notice of Disqualification, which indicated that the claimant had been denied Section 30 benefits because she had failed to apply for such benefits by the fifteenth compensable week of her claim.
17. The claimant appealed the disqualification.

Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the consolidated findings are supported by substantial and credible evidence; and (2) whether the review examiner’s ultimate conclusion is free from error of law. Upon such review, the Board adopts the review examiner’s consolidated findings of fact and deems them to be supported by substantial and credible evidence.

The review examiner’s initial 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 retraining programs of the obligation to search for work and permits extensions of up to 26 weeks of additional benefits. The procedures and guidelines for implementation of training benefits are set forth in 430 CMR 9.00–9.09. Under G.L. c. 151A, § 30(c), it is the claimant’s burden to prove that she fulfills all of the requirements to receive training benefits.

Here, the question is whether the claimant submitted her G.L. c. 151A, § 30 application within the deadline provided in the DUA regulations. In that regard, DUA regulations at 430 CMR 9.01 state, in pertinent part:

The 26 week training extension is available only to those claimants who have applied to the Director for training no later than the 15th compensable week of the claim, unless that period is tolled pursuant to 430 CMR 9.06.

The foregoing requirement is further clarified in the “Definitions” section of DUA’s section 30 regulations at 430 CMR 9.03:

15 Week Period: The 15-week period coincides with the 15 compensable weeks of a regular benefit claim after receipt of the notice required by 430 CMR 9.07(3). However, if any determination denying regular benefits under M. G. L. c. 1251A, §§ 39, 41, or 42 is reversed, the 15 week period shall begin with the week following the week notice of such determination or decision was mailed to the claimant, provided the benefit year has not expired and the tolling provisions of 430 CMR 9.06 do not apply.

Also pertinent to the timeliness issue is 430 CMR 9.06 (3)(c), which states:

If DUA fails to comply with the provision of 430 CMR 9.07(3),[[1]](#footnote-1) or if DWD, DUA, or their agents have given the claimant misinformation that causes the claimant to miss the 15-week deadline, the 15 week period shall be tolled until the date the claimant learns of the eligibility requirements, including application deadlines, for training benefits provided in M.G.L. c. 151A, § 30(c).

As the findings reflect, the claimant filed for benefits with an effective date of March 9, 2014. If the claimant had been initially deemed eligible, she would have been required to submit an application for G.L. c. 151A, § 30, training benefits on or before June 22, 2014 (the end of the fifteenth compensable week of her claim). However, she was initially denied benefits, then successfully appealed that denial and was awarded benefits in a decision issued on June 16, 2014. Pursuant to the above-quoted definition of “15 Week Period,” her deadline for submitting a G.L. c. 151A, § 30, application was enlarged as a matter of law to the fifteenth week following the June 16 decision, specifically until October 4, 2015.

The record reflects that, upon receiving the June 16 decision, the claimant consulted DUA officials about applying for G.L. c. 151A, § 30, training benefits and was given the erroneous information that her application was due on June 22 rather than October 4. The claimant was not able to find an approved program and fulfill other requirements of the application process in the approximately six days between the decision and June 22.[[2]](#footnote-2) She continued to search for a suitable program, eventually finding one that would begin in November 2014. On October 1, 2014, the claimant contacted the DUA to obtain an application for training benefits for the program she had found. On October 2, a DUA agent sent the claimant a section 30 program application, along with a cover letter stating, “The following information is need to determine your eligibility to receive unemployment benefits. **You must respond to this information by 10/14/2014.** Please return the enclosed completed form by the stated deadline to: [DUA’s address].” (Emphasis in original).[[3]](#footnote-3) The claimant submitted her application on October 9, 2014.

It is apparent from the foregoing facts that the claimant was given misinformation twice by the DUA about the date on which her G.L. c. 151A, § 30, application would be due. In late June 2014, she was given a deadline that erroneously failed to reset the 15-week “clock” after the claimant prevailed in an appeal about her eligibility for unemployment benefits. On October 2, 2014, she was provided a section 30 application with a cover letter that told her in boldface type to return the application by October 14, 2014. She was never told the actual correct due date, which was October 4, 2014, and she submitted it on October 9, 2014, which was prior to the deadline she had been given (i.e., October 14, 2014). Under these circumstances, we think the claimant has established that the “DUA, or [its] agents have given the claimant misinformation that causes the claimant to miss the 15-week deadline,” within the meaning of 430 CMR 9.06(c)(3).

We, therefore, conclude as a matter of law that the claimant’s application for G.L. c. 151A, § 30, benefits was submitted in a timely fashion.

The Board takes administrative notice that the program for which the claimant sought section 30 benefits was approved for such benefits at the time she applied. However, the findings indicate that the claimant attended the program for approximately one week before taking a leave of absence. The claimant’s testimony makes it clear that she did not return to the program after November 26, 2014. Therefore, we limit the effect of this decision to the period of time between November 18 and November 26, 2014.

The review examiner’s decision is reversed. The claimant is entitled to receive an extension of up to 26 times her weekly benefit rate while she attends this program, pursuant to G.L. c. 151A, § 30(c), provided.

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**BOSTON, MASSACHUSETTS** Paul T. Fitzgerald, Esq.

**DATE OF DECISION -** **November 8, 2017** Chairman

 

Judith M. Neumann, Esq.

Member

Member Stephen M. Linsky, Esq. did not participate in this decision.

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS STATE DISTRICT COURT OR TO THE BOSTON MUNICIPAL 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](http://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.

JN/rh

1. 430 CMR 9.07(3) provides, in relevant part, as follows: “DUA shall provide each claimant with written information regarding eligibility for training benefits, including notification that application for such training benefits must be made no later than the first 15 compensable weeks after receipt of such written information ….” The record contains a copy of the information that DUA supplies to claimants about section 30 training programs (Remand Exhibit # 9, submitted by the claimant), which clearly states that claimants “must apply during the first 15 weeks you receive unemployment benefits,” and directs claimants to “Apply for TOP as soon as you know you are eligible for unemployment benefits AND have a training course.” The claimant does not contend that the DUA failed to comply with 430 CMR 9.07(3). [↑](#footnote-ref-1)
2. As to the claimant’s efforts to find a program, we have supplemented the findings of fact with the unchallenged evidence before the review examiner. *See* Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Director of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005). [↑](#footnote-ref-2)
3. The claimant testified at the remand hearing, although not at the initial hearing, that she had received a “letter” from DUA in early fall of 2014, giving her a deadline of October 14, 2014, to file an application for section 30 benefits. Consolidated Finding of Fact #10 is based upon that testimony. The Board supplements that finding by taking administrative notice of correspondence contained within its UI-online database, indicating that, in correspondence dated October 2, 2014, the DUA sent the claimant a G.L. c. 151A, § 30, application along with a form cover letter containing the content described in the body of this decision, above. [↑](#footnote-ref-3)