

Board of Review
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Issue ID: 0018 1732 53
Claimant ID:

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Eric Sullivan, a review examiner of the Department of Unemployment Assistance (DUA), to deny unemployment training benefits. Benefits were denied on the ground that the claimant was not enrolled in a full-time training program, pursuant to G.L. c. 151A, § 30(c).

The claimant had filed a claim for unemployment benefits, which was approved, effective October 25, 2015. She subsequently filed an application with the DUA for an extension of benefits to attend a training program, which was denied in a determination issued on March 2, 2016. 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 April 12, 2016. 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 September 13, 2016, the District Court ordered the Board to obtain further evidence. Consistent with this order, we remanded the case to the review examiner to allow the claimant to update the record in order to establish when she became a full-time student. The claimant attended the remand hearing, and the review examiner issued his consolidated findings of fact. However, upon further review, the Board determined that it was necessary to remand the case a second time in order to obtain further evidence about the claimant's anticipated enrollment status through the end of her training program. Following a second remand hearing attended by the claimant, the review examiner issued his second set of consolidated findings of fact.

The issue before the Board is whether the review examiner's conclusion that the claimant is not enrolled in an approved training program, as required under G.L. c. 151A, § 30(c), is supported by substantial and credible evidence and is free from error of law, in light of the new evidence showing that the claimant is now enrolled in a full-time course of study.

After reviewing the entire record, including the recorded testimony and evidence from the original and remand hearings, the review examiner's decision, the claimant's appeal, the District Court's Order, and the final set of consolidated findings of fact, we reverse the review examiner's decision.

Findings of Fact

The review examiner's final set of 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 new claim for unemployment benefits, which was established with an effective date of 10/25/2015.
2. After filing her unemployment claim, the claimant was not informed or provided any written information regarding Section 30 training program opportunities.
3. The claimant's first language is Arabic and she has a hard time understanding English.
4. The claimant was not aware of any requirement to apply for training by the 15th compensable week of her claim.
5. The claimant received her first week of compensation for the week ending 11/7/2015. The claimant received her 15th compensable week the week ending 2/13/2016.
6. While collecting unemployment benefits, the [claimant] visited her local career center in January, 2016, and was provided information about Section 30 Training. The claimant was not made aware of any deadline to apply.
7. In February, 2016, the claimant completed a Training Opportunities Program Application to attend an Associate's Degree in Hospitality Management program at Mass Bay Community College from 1/20/2016, through 6/30/2017.
8. The claimant was unable to enroll full-time beginning on 1/20/2016 since the semester had already started when she found out about Section 30.
9. The claimant submitted the Training Opportunities Program Application on 2/24/2016, which was during her 17th compensable week.
10. The claimant[']s application stated that she was scheduled to take 13 credits from 1/20/2016, through 5/15/2016, 3 credits from 5/19/2016, through 6/30/2016, 4 credits from 7/15/2016, through 8/15/2016, 13 credits from 9/5/2016, through 12/20/2016, 13 credits from 1/20/2017, through 5/15/2017, and 3 credits from 5/19/2017, through 6/30/2017.
11. The school mistakenly entered 13 credits from 1/20/2016, through 5/15/2016, when the claimant was actually taking 7 credits total.

12. On 3/2/2016, the DUA issued the claimant a Notice of Disqualification in accordance with Section 30 due to attending the program part-time and due to submitting the application beyond the 15th compensable week.
13. The first time the claimant was able to begin full-time schooling after submitting her application was the fall semester from 9/5/2016, through 12/20/2016.
14. On 11/16/2016, the Director of Admissions at Mass Bay Community College completed a new Training Opportunities Program Application on the claimant's behalf. The application was signed by the Director of Admissions and submitted to the DUA Hearings Department by the claimant on 11/16/2016.
15. The claimant needs 38 more credits in order to obtain an Associate's Degree in Hospitality Management.
16. The Associate's Degree in Hospitality Management requires a total of 63 credits.
17. The new Training Opportunities Program Application shows that the claimant will complete her Associate's Degree in Hospitality Management on 8/20/2017 taking 38 [credits] in order to meet the required total of 63 credits.
18. According to the new Training Opportunities Program Application, the claimant is taking 13 credits for the Fall semester from 9/7/2016, through 12/23/2016, 16 credits for the Spring semester, and 9 credits for the Summer semester from 5/23/2017 through 8/20/2017.
19. The 9 credits taken during the Summer semester from 5/23/2017, through 8/20/2017, is a combination of regular courses and accelerated courses in order for the claimant to complete her degree.
20. The claimant could take as many credits as needed for the Summer semester, however she only needed 9 credits to complete her degree.

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 original 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. In light of the additional evidence, we believe that the review examiner's original decision is incorrect, and that the claimant is entitled to training benefits, as explained below.

The review examiner's decision to deny the claimant's requested training benefits derives from G.L. c. 151A, § 30(c), which relieves claimants who are enrolled in approved training programs of the obligation to search for work, and which permits extensions of up to 26 weeks of additional benefits (Section 30 benefits). The procedures and guidelines for implementation of Section 30 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 a training extension.

Because the original record showed that the claimant was not enrolled in her associate's degree program full-time during the period that the claimant was requesting Section 30 benefits, the examiner correctly concluded that the claimant's training program was not approvable under the regulations.¹ His decision was based upon 430 CMR 9.05, which provides, in relevant part, as follows:

(2) 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 . . .

Following the District Court's remand, the claimant has produced updated school records and a revised Section 30 application showing that, beginning with the fall, 2016, semester, she has been enrolled full-time. She will be taking 13 credits during the fall of 2016, 16 credits during the spring of 2017, and wrapping up her degree requirements by taking 9 credits during the summer term of 2017.² Consolidated Findings ## 18 and 19. In Consolidated Finding # 19, the examiner notes that some of the claimant's summer, 2017, courses are accelerated. We understand this to mean that the college's shorter summer term requires that the claimant devote more hours per week to each course than she would have if the course were spread across an approximately 15-week fall or spring semester.³ We have previously permitted a condensed summer course credit load to meet the requirement for full-time enrollment. *See, e.g.*, Board of Review Decision 0013 1493 19 (Mar. 30, 2015) (eight credits was the equivalent of full-time during the summer term).⁴

¹ The claimant's original Section 30 application sought approval for her training program beginning on January 20, 2016, when she was not actually enrolled full-time. Consolidated Findings ## 7 and 8.

² By the summer of 2017, when the claimant is taking these final nine credits for her associate's degree, she will have exhausted both her regular and extended unemployment benefits.

³ The shorter duration of the summer terms are reflected in the claimant's original Section 30 application, Exhibit # 3. We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. *See* Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

⁴ Board of Review Decision 0013 1493 19 is an unpublished decision, available upon request. For privacy reasons, identifying information is redacted.

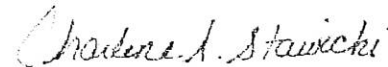
We, therefore, conclude as a matter of law that the claimant has shown that she will be enrolled in a full-time training program, as required pursuant to 430 CMR 9.05(2)(b), beginning with her fall, 2016, semester.

The review examiner's decision is reversed. The claimant is entitled to an extension of up to 26 times her weekly benefit rate while she attends her training program, pursuant to G.L. c. 151A, § 30(c), for the week beginning September 4, 2016, through August 19, 2017, if otherwise eligible.



Judith M. Neumann, Esq.
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION – November 30, 2016



Charlene A. Stawicki, Esq.
Member

Chairman Paul T. Fitzgerald, 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

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.

AB/rh