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Office Hours:
8:45 a.m. to 5:00 p.m.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
BOARD OF REVIEW
Government Center
19 Staniford Street
Boston, MA 02114

DECISION OF BOARD OF REVIEW

In the matter of:

Appeal number: BR-71331

EMPLOYEE APPELLANT:

[REDACTED]
[REDACTED]
Springfield, MA 01109-3429

[REDACTED]
Office #05

On January 21, 1997, in Boston, Massachusetts, the Board reviewed the written record and a recording of the testimony presented at a hearing held by the Deputy Director's representative on October 15, 1996.

On December 6, 1996, the Board allowed the claimant's application for review of the Deputy Director's decision in accordance with the provisions of Section 41 of M.G.L.c. 151A, the Massachusetts Employment and Training Law. The Board remanded the case to the Deputy Director for further review and to make subsidiary findings of fact from the record. The Deputy Director returned the case to the Board on December 19, 1996.

The Board has reviewed the entire case to determine whether the Deputy Director's decision was founded on the evidence in the record and was free from any error of law affecting substantial rights.

The claimant's appeal is from the Deputy Director's decision which found that:

The claimant does not meet all of the requirements of Section 30 of the law.

In order to be approved for Section 30 benefits, the claimant must meet all of the requirements of the law. In this case, the key issue is the 15 week requirement. A claimant must apply for training no later than the 15th compensable week of the claim. That week was the week ending May 4, 1996. The claimant did not apply for Section 30 training until the week ending September 14, 1996. Thus, she does not meet that criteria of the Law.

The claimant does not meet the requirements of Section 24(b) of the Law. She is capable of working, is available to work, and has made an adequate search for work. Ordinarily, she would be entitled to a waiver of the requirements of Section 30 while in attendance at training. In this case,

The claimant is denied benefits for the week ending May 5, 1996 and for an indefinite number of week thereafter, until she meets the requirements of the law. If, at a later date, she believes there has been a change in the facts upon which this decision was based, she may file another claim to determine her rights to benefits thereafter.

M.G.L.c. 151A, s. 30(c), and 430 CMR 9.04(1)(a), 9.05(2), 9.06(4)(c), & 9.07(3) are pertinent and provide as follows:

Section 30(c) . . . 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 eighteen 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; provided that the claimant shall begin training in the first available program which is a reasonable distance from the claimant's residence, as determined by the commissioner; provided, further, that the commissioner, in his discretion, may extend the period once for not more than two weeks for any applicant whose initial application is denied and provided, further, that any benefits paid to an individual under the provisions of this paragraph which would not be chargeable to the account of any particular employer under the provisions of section fourteen shall be charged to the solvency account. An individual eligible to receive a trade readjustment allowance under Chapter 2 of Title II of the Trade Act of 1974, as amended, shall not be eligible to receive additional benefits under this section for each week the individual receives such trade readjustment allowance. 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 .

The department shall provide each claimant with written information regarding eligibility for benefits under this section, and notify claimant's that any application for benefits under this section must be submitted no later than the fifteenth week of a new or continued claim.

430 CMR 9.04: Eligibility of Claimants and Special Conditions for Training Extension Benefits

- (1) Claimants may be eligible for approved training if it is determined that they are permanently separated from work, unlikely to obtain suitable employment based on their most recently utilized skills, and in need of training to become re-employed. In addition, claimants must possess sufficient aptitude and skills to successfully complete and benefit from the approved training. Enrollment, regular attendance, and satisfactory progress in the selected training program are required for continued eligibility in the training program.
- (a) A Claimant will be considered permanently separated from work if he or she is unemployed with no recall date or with an indefinite date of recall, or if he or she leaves partial unemployment from other than the most recent base period employer to enter training pursuant to M.G.L.c. 151A, s. 25(e).

430 CMR 9.05: Approval of Training Programs (Courses)

- (1) Training must prepare the claimant for marketable skills in a demand occupation in the claimant's L.M.A. or any other L.M.A. to which the claimant wishes to relocate or commute.
- (2) Training programs must meet certain measurable standards as set forth below:
 - (a) Provide vocational or basic skills training.
 - (b) Have achieved or, if a new program, show reasonable expectation of achieving an average placement rate for UI claimants in full time or part time (20 hours per week or more) training related employment of 70% during the most recent 12 month period for which such data is available, except that if the state-wide total unemployment rate is greater than 7.0% at the time of application, the placement rate for UI claimants shall be no less than 60% during the most recent 12 month period for which such data is available. Other evidence that successful completion of the program is likely to lead to reemployment may also be requested and considered.

(c) 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 at least 12 credit hours per week for a minimum of 12 credits each semester; and provided further that:
2. if the program is offered as part practicum or internship and part classroom hours, the program will be approved only for the time needed to complete state or federal certification or licensing requirements, or the time deemed necessary by DET to allow the claimant to become employable in the occupation for which the training has been provided.

(d) Be designed to train the claimant in skills that will enable him or her to obtain employment in a demand occupation. Such training may include basis skills programs, as well as programs offered at the post-secondary level (including those that are degree-granting), provided that they offer preparation for obtaining employment in a recognized occupation or cluster of occupations.

(e) Be completed within one year, except that this time limit may be extended to a maximum of one and one-half years if the program includes a sequential combination of basic skills and vocational training and the basis skills component does not exceed a total of six months.

(f) Be offered by a training institution located in Massachusetts; provided however, that training offered by institutions located in states contiguous to Massachusetts may be approved if such training is in a demand occupation and is not available in Massachusetts, or cannot be obtained from a Massachusetts provider located within a reasonable commuting distance from the claimant's residence.

(g) Be offered by a training institution which has paid all contributions, payments in lieu of contributions, interest or penalty charges due under M.G.L.c. 151A.

(h) Provided that any training program approved under Title III shall be deemed an approved training program under 430 CMR 9.00.

430 CMR 9.06: Application Procedure

- (4) The 15-week application period provided in 430 CMR 9.04(2)(b) shall be tolled if any of the following three conditions occur:

(c) If D.E.T. fails to comply with the provision of 430 CMR 9.07(3), the 15 week period shall be tolled until the date the claimant learns of the training benefits provided in M.G.L.c. 151A, s. 30(c).

430 CMR 9.07: Rights and Obligations of Program Participants

- (3) The Commissioner 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 of the claim or within an extended filing period under 430 CMR 9.06(2) in order to be eligible for the benefit extension of up to 18 times their benefit rate under 430 CMR 9.04(2).

The Deputy Director's representative held a hearing on October 15, 1996. The claimant was present. The Board remanded the case to the Deputy Director for further review and to make additional findings of fact from the record. Whereupon, the Deputy Director's representative made the following consolidated findings of fact:

In a determination issued on September 19, 1996 under Sections 30 and 24(b) of the law, the claimant was denied benefits for the week ending May 25, 1996 and indefinitely. Said determination was appealed timely by the claimant on September 25, 1996.

The claimant worked as a sales person for her most recent employer, a cellular telephone company, from September 1995 until January 1996, when she was laid off from her job. Subsequently, she filed a claim for benefits on January 25, 1996.

The claimant also has worked for three years as a mental retardation worker for the Department of Mental Health.

The claimant attempted to secure another job using the following job search methods: a. networking, b. reviewing newspaper ads, and c. visiting employers. She did so three days per week.

The claimant was unable to find a job and concluded that she would have to seek training in order to find work.

The claimant became aware of an office systems word processing course given by MCIDI. She contacted this training center in April

On August 26, 1996, the claimant attended orientation at MCDI, was tested, and was found eligible for the word processing course.

The claimant began training on September 30, 1996 at MCDI in the office systems/word processing course. The completion date is May 9, 1997. Classroom hours are 25 per week.

The claimant is capable of working.

The claimant is available to work from 3-9 p.m., Monday through Thursday.

The claimant attends classes from 8:40 a.m. until 2:15 p.m., Monday through Friday.

The claimant exhausted her regular UI benefits during the week ending June 25, 1996.

The Agency gave the claimant written information regarding the necessity to submit a Section 30 Training Opportunities Program application within the fifteenth compensable week of her claim.

Regarding finding of fact #6, the claimant was required by the Agency to have her Section 30 Training Opportunities Program application form completed by MCDI because they were administering the course.

MCDI informed the claimant that they would not complete her Section 30 Training Opportunities Program Application form until the course received certification.

During the week ending May 4, 1996, the claimant informed an Agency representative, Mr. Richard Liasse, that MCDI could not complete her application form within the fifteen week deadline.

The Agency representative informed the claimant that if she obtained a letter from MCDI she would have no problem in submitting a late application.

The claimant obtained such a letter from MCDI.

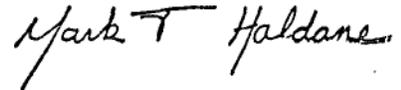
After reviewing the record, the Board adopts the findings of fact made by the Deputy Director as being supported by substantial evidence. The Board concludes, however, that the Deputy Director's decision is based on an error of law and modifies that decision for the following reasons:

The Agency gave the claimant written material concerning eligibility for benefits under Section 30(c) of the Law quoted above. However, the subsequent information, given to the claimant by a representative of the Agency, negated the information contained in that written material. The claimant's failure to meet the

misinformation, the Agency failed to comply with the provisions of 430 CMR 9.07(3) cited above, and the 15-week application period should be tolled according to 430 CMR 9.06(4)(c) also cited above.

The findings establish that the claimant is a permanently separated individual in accordance with the provisions of 430 CMR 9.04(1)(a) quoted above, and the course meets all the criteria to be considered an approved course in accordance with the provisions of 430 CMR 9.05(2) also quoted above, therefore, Section 30 extended benefits are approved.

The Board modifies the Commissioner's decision. The claimant is entitled to Section 30 extended benefits if otherwise eligible.



Mark T. Haldane
Chairman

BOSTON, MASSACHUSETTS
DATE OF MAILING -
FEB 04 1997



Kevin P. Foley
Member

ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS DISTRICT COURT

(See Section 42, Chapter 151A, General Laws Enclosed)

LAST DAY -

MAR 06 1997

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