



COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
BOARD OF REVIEW
Government Center
19 Staniford Street
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30(1)
430 EME
9.06
9.07(3)

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

DECISION OF BOARD OF REVIEW

In the matter of:

Appeal number: **BR-263818**

On October 25, 1999, in Boston, Massachusetts, the Board reviewed the written record and recordings of the testimony presented at the hearings held by the Deputy Director's representative on July 27, 1999, and September 30, 1999.

On September 9, 1999, the Board allowed the claimant's application for review of the Deputy Director's decision in accordance with the provisions of section 41 of Chapter 151A of the General Laws, the Massachusetts Employment and Training Law (the Law). The Board remanded the case to the Deputy Director to take additional evidence and to make additional and consolidated findings of fact. The Deputy Director returned the case to the Board on October 4, 1999.

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 concluded that:

The claimant needs industrial or vocational training to realize employment. The training program meets required standards. However, other required criteria have not been satisfied within the meaning of Section 30 of the law.

In order to satisfy the requirements of the law, two sets of criteria must be satisfied. The first set pertains to claimant eligibility. First, the claimant must be permanently separated from work. That is [sic] case here. Second, Labor market information must show that he is unlikely to find suitable employment based on his most recent skills. There are no jobs available in the field where the claimant worked. Third, the claimant must be in need of training to become re-employed. Clearly, the claimant needs basic education, as he can not read and write English. Specific vocational training should follow this. Fourth, the claimant must begin training prior to exhausting his benefits. Training began on 7/6/99. However, benefits were exhausted on 6/5/99. Thus, he has not met this criterion. Fifth, he must have applied for training no later than the fifteenth compensable week of the claim. In this case, he applied during the 26th week. Thus, this criterion has not been satisfied.

The second set of criteria pertains to program/course eligibility. First, the program must provide vocational or basic skills training. In this case, the basic ed. class would be basic skills. Second, the training must be full time. This is defined as at least 20 hours per week. This class meets for about 30 hours per week. Thus, this criterion has been satisfied. Third, training must be completed within one year. This course is about six months in duration. Thus, all program standards have been met.

The following is concluded.[sic] The claimant is clearly in need of a basic education class to learn English. He is commended for enrolling and attending classes to improve his basic skill level. However, Section 30 extended benefits can not be approved unless every criterion mentioned above has been satisfied. In this case, there are two claimant eligibility criteria which have not been satisfied, namely: classes began after the claim was exhausted and he applied for training after the fifteenth compensable week of the claim.

In view of the facts, extended benefits are denied.

The claimant is not entitled to extended benefits.

Section 30(c) of Chapter 151A of the General Laws and 430 CMR 9.06(4)(c) and 430 CMR 9.07(3) are pertinent and provide as follows:

Section 30. Total benefits for year; industrial or vocational retraining; solvency account charge; trade readjustment allowance.

- (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 claimants that any application for benefits under this section must be submitted no later than the fifteenth week of a new or continued claim.

9.06: (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:

(a) If the training program for which a claimant has applied cannot or refuses to reasonably accommodate an individual who is a qualified individual with a disability pursuant to the Americans with Disabilities Act (ADA), then the 15 week period shall be tolled from the date the claimant applied to DET until the date of the denial by DET of the training program.

(b) If DET denies a claimant's application after the period provided in 430 CMR 9.06(3) because the training program applied for does not meet the requirements of 430 CMR 9.05 and the claimant's opportunity for reapplying for training during the 15 week period is thereby decreased by two weeks or more, then the 15 week period shall be tolled from the date the claimant first applied for training until the date of DET's denial.

(c) If DET 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 eligibility requirements for training benefits provided in M.G.L. c. 151A, § 30(c).

(d) If a claimant who is not permanently separated at the time of the initial claim becomes permanently separated during the course of his benefit year, the 15 week period shall commence on the date the claimant becomes permanently separated.

(e) In no event shall the 15 week period be tolled beyond the claimant's benefit year.

9.07 (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 July 27, 1999. The claimant appeared. The Deputy Director's representative held a remand hearing on September 30, 1999. Whereupon, the Deputy Director's representative consolidated his final findings of fact as follows:

1. The claimant worked as a winder operator for the employer, a manufacturing company, from 1/8/79 until 10/30/98, when he was laid off from his job. Subsequently, he filed a claim for benefits on 11/2/98.
2. The claimant was unable to find another job in the same line of work. That is because there are no such jobs available.
3. The claimant can not read or [sic] write in English. In order to find another job, he must learn to complete a job application. Thus, he sought a training program in basic education.

4. The claimant visited the Career Point job placement program for assistance in finding a training program. He was referred to the Mass. Career Development Institute (MCDI).
5. MCDI determined that the claimant should take an adult basic education class first in order to learn to read and write in English. He could then take a job training class afterward.
6. On 5/24/99, MCDI completed and signed Form 1622. This is the DET form used to apply for Section 30 training. The Form 1622 was completed during the 26th compensable week of the claim.
7. The training program began on 7/6/99 and ends on 12/31/99. Classroom hours are from 9 am to 3:30 pm, Monday through Friday. There is no placement rate upon completion, as this is not a specific job-training course.
8. The claimant began training on 7/6/99.
9. The claimant exhausted his unemployment benefits on 6/5/99.
10. The course that the claimant is enrolled in at MCDI is a DET approved course of training for Section 30.
11. The claimant was not provided with written information by the DET regarding his eligibility for training benefits. Also, he was not provided with notification that his application must be submitted no later than the fifteenth week of his new or continued claim.
12. The claimant was not provided with verbal notification of the need to apply for Section 30 benefits before the sixteenth compensable week of his claim.
13. The claimant was unaware of the fifteenth week compensable regulation until after he began training on 7/6/99.
14. Credibility Assessment re: facts 11 - 13 above. The claimant testified credibly that he did not receive any information either in writing or verbally concerning Section 30 until sometime after 7/6/99. His testimony was forthright, consistent and responsive to all questions he was asked.

After reviewing the record, the Board adopts the consolidated findings of fact made by the Deputy Director's representative as being supported by substantial evidence. The Board concludes as follows:

Under Massachusetts General Laws, Chapter 151A, § 30(c) and 430 CMR 9.07(3) the D.E.T. is required to provide a claimant with written information regarding training benefits and notification that any application under this section must be submitted no later than the fifteenth compensable week of a new or continued claim.

On November 12, 1998, the claimant filed a new claim for unemployment benefits. On May 24, 1999, which was the 26th compensable week of his claim, the claimant filed an application for training to attend the Mass. Career Development Institute commencing July 6, 1999. This is a DET approved course for adult basic education to learn to read and write. The claimant began this full time schooling on July 6, 1999, and he is expected to complete it on December 31, 1999.

Prior to the claimant submitting his application for this schooling on May 24, 1999, the claimant was not provided with any written information by the D.E.T. regarding his eligibility for training and the need to apply no later than the fifteenth compensable week. Therefore, the Board concludes, in accordance with 430 CMR 9.06(4)(c), the 15-week period is tolled and the claimant is entitled to approval of section 30 extended benefits.

The decision of the Deputy Director is modified. The claimant is entitled to section 30 extended benefits for the week ending July 10, 1999, and subsequent weeks, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF MAILING - OCT 27 1999

Thomas E. Gorman
Thomas E. Gorman
Member

Kevin P. Foley
Kevin P. Foley
Member

APPELLANT: I.D. 

ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS DISTRICT COURT
(See Section 42, Chapter 151A, General Laws Enclosed)

LAST DAY - NOV 26 1999

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