

Board of Review
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Issue ID: 0013 3460 73

Claimant ID: [REDACTED]

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Kristina Gasson, a review examiner of the Department of Unemployment Assistance (DUA), to deny training benefits pursuant to G.L. c. 151A, § 30(c). The claimant had originally submitted an application for training benefits (“section 30 application”) to the DUA’s Training Opportunities Program (TOP) Unit, which was denied on May 16, 2014. The claimant appealed to the DUA Hearings Department. Following a hearing on the merits, the review examiner affirmed the agency’s determination in a decision rendered on October 6, 2014. The claimant sought review by the Board, which affirmed, and the claimant appealed to the District Court, pursuant to G.L. c. 151A, § 42.

On March 25, 2015, the Boston Municipal Court ordered the Board to obtain further evidence as to why the claimant submitted her section 30 application late. Consistent with this order, we remanded the case to the review examiner to take additional evidence on this question. Thereafter, the review examiner issued her consolidated findings of fact.

The issue before the Board is whether the review examiner’s conclusion that the claimant’s section 30 application is time-barred, because it was submitted beyond the statutory 15-week application period, is supported by substantial and credible evidence and is free from error of law.

After reviewing the entire record, including recorded transcripts and exhibits of the original and remand hearings, the claimant’s appeal, the District Court’s Order, and the consolidated findings of fact, we reverse the review examiner’s decision.

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. On May 23, 2013, the claimant filed an unemployment claim with an effective date of May 19, 2013 (“2013 claim”). Prior to this date, the claimant separated from her position at her previous employer, a hospital.
2. The claimant was receiving Emergency Unemployment Compensation (“EUC”) benefits until the week ending December 28, 2013.

3. The claimant was last paid benefits on the 2013 claim during the week ending January 4, 2014, when she exhausted the maximum benefit amount on her claim.
4. The claimant's primary language is Haitian Creole.
5. The claimant's service language on the 2013 claim is listed as English. (Exhibit 1)
6. The claimant corresponded with Department of Unemployment Assistance ("DUA") representatives in both English and Haitian Creole.
7. It is unknown whether the claimant was asked what her primary language was, or whether the claimant informed the DUA that her primary language was Haitian Creole when filing the 2013 claim.
8. On April 7, 2014, the claimant enrolled in a "Beyond Jobs First Step Class" training program at Goodwill in order to teach her how to look for work, how to use computers in order to look for work, and English communication skills related to her work search.
9. On or about April 7, 2014, an instructor at the claimant's training program informed the claimant about the Section 30 Training Opportunities Program ("TOP") and told her that she might be eligible for extended benefits while enrolled in approved training.
10. On or about April 7, 2014 was the first time that the claimant was informed about TOP. The claimant did not receive any written information about TOP in either English or Haitian Creole prior to April 7th.
11. The claimant called DUA and requested that a TOP application be mailed to her. At this time, a DUA representative informed her that she needed to submit the application as soon as possible because the deadline was approaching.
12. The DUA deadline for the claimant to submit a TOP application was April 12, 2014. This date is 15 weeks after the claimant stopped receiving EUC benefits on December 28, 2013.
13. On April 15, 2014, the claimant submitted an application to DUA's TOP Unit. The application was received by DUA on April 18, 2014.
14. The TOP application states that "PART B: TRAINING PROGRAM INFORMATION FOR VOCATIONAL TECHNICAL TRAINING" is to be completed by the Training Facility. The claimant asked an individual at the Goodwill program to help her with the application. The claimant completed Part B of the application herself and omitted information such as

Unemployment Insurance Employer ID#, Federal Employer ID#, and other information. The claimant did not understand that the training facility was required to complete Part B and give information about the program.

15. The claimant also obtained a letter from a Job Specialist at Goodwill to include with her TOP application stating that she would be attending class Monday through Friday from 9:30AM to 3:00PM for four weeks beginning on April 7th, followed by a period of ongoing job training.
16. The Goodwill "Beyond Jobs First Step Class" training program was not pre-approved and not listed in the Massachusetts One-Stop Employment System ("MOSES"), a database containing pre-approved TOP courses. As a result, the TOP Unit needed to evaluate the training program to ensure it met the requirements for approval. [The] TOP Unit was unable to evaluate the training program and approve the claimant's application because it was missing necessary information.
17. After her 2013 claim benefit year expired, on May 18, 2014, the claimant filed a new unemployment claim with an effective date of May 18, 2014 ("2014 claim").
18. When filing the 2014 claim, the claimant indicated that her primary language was English and elected to receive correspondence from DUA electronically at her email address. (Remand Exhibit 8)
19. The claimant was eventually determined to be monetarily ineligible for benefits on the 2014 claim as she had not worked since she separated from her most recent employer in 2013 and had not earned sufficient wages.
20. The claimant completed the Goodwill "Beyond Jobs First Step Class" training program on or about May 20, 2014.
21. On May 16, 2014, the DUA sent the claimant a Notice of Disqualification ("Notice") denying the claimant's school or training approval because the claimant applied after the 15th compensable week deadline (April 12, 2014) and for submitting an incomplete application. The Notice further notified the claimant that she could submit a new TOP application on or before May 28, 2014.
22. The fifth page of the Notice ("Babel notice") included paragraphs in both English and in Haitian Creole stating that the Notice contained important information that needed to be translated immediately and that she could contact the DUA Multilingual Services Unit with questions. (Remand Exhibit 6)
23. The claimant was given a 10-day appeal date of May 27, 2014 on the Notice because her service language at DUA was listed as English at this time.

24. It is unknown whether the claimant received or read either the Notice or the Babel notice paragraph in Haitian Creole.
25. On May 27, 2014, the claimant visited the DUA Walk-in [sic] Unemployment Insurance Walk-in Assistance center (“Walk-in Center”) in Boston to ask questions about her unemployment claim.
26. At this time, a DUA representative printed out the Appeal Request Information form on the third and fourth pages of the Notice and explained that the TOP application was denied and that she needed to submit an appeal, which was listed as due on May 27, the same day. (Remand Exhibit 6)
27. The DUA representative did not inform the claimant that she also had the opportunity to submit a new TOP application before May 28, 2014.

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. However, as discussed more fully below, we reject the review examiner’s legal conclusion, prior to remand, that the claimant’s section 30 application was late.

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.

The issue on remand is whether the claimant submitted her section 30 application within the deadline provided in the DUA regulations. 430 CMR 9.01 states, in pertinent part, as follows:

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 15-week deadline to apply for training benefits was suspended after the federal government began providing emergency extended benefits in response to the recent recession, pursuant to 430 CMR 9.06(3)(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.

The end of federal emergency extended benefits ("EUC") on December 28, 2013, effectively reinstated the 15-week deadline to apply for training benefits. The DUA determined that, for claimants who had been receiving federal emergency benefits through the week ending December 28, 2013, the 15-week deadline took effect and began on that date (December 28, 2013), thus requiring them to apply for training benefits no later than April 12, 2014. Because the claimant submitted her section 30 application on April 15, 2014, the review examiner concluded that she missed the deadline.

After remand, the review examiner found that the claimant first learned about the TOP program on or about April 7, 2014, from an instructor in her training program. In light of this new finding, we consider a separate subsection of the DUA regulations. 430 CMR 9.06 (3)(c) states:

If DUA fails to comply with the provision of 430 CMR 9.07(3), 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).

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, or within an extended filing period under 430 CMR 9.06 in order to be eligible for the benefit extension of up to 26 times their benefit rate under 430 CMR 9.04(2). . . .

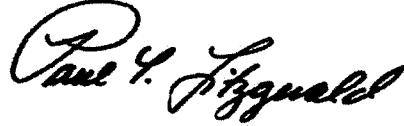
In consolidated finding # 10, the examiner further found that, prior to April 7, 2014, the claimant had not received any written information about the TOP program either in English or Haitian Creole. Since it appears that the DUA failed to provide the claimant with the written information about the section 30 training program or the 15-week application deadline, as required under 430 CMR 9.07(3), the claimant was entitled, pursuant to 430 CMR 9.06(3)(c), to have the 15-week application deadline tolled until the date she learned of the eligibility requirements. Thus, her 15-week application period began on or about April 7, 2014, rendering her April 15, 2014¹ section 30 application timely.

We, therefore, conclude as a matter of law that the claimant submitted her section 30 application within the time period required by G.L. c. 151A, § 30(c), and 430 CMR 9.06(3).

¹ We also note that the claimant's April 15, 2014, section 30 application was submitted before the end of the claimant's benefit year (May 18, 2014), as required by 430 CMR 9.06(3).

The review examiner's decision is reversed. As set forth in the Boston Municipal Court Order (Remand Exhibit # 4), the claimant is permitted to submit a new section 30 application for the DUA's approval.

BOSTON, MASSACHUSETTS
DATE OF DECISION - June 16, 2015



Paul T. Fitzgerald, Esq.
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

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