

THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
BOARD OF REVIEW

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BOARD OF REVIEW
DECISION

In the matter of:

Appeal number: **BR-114117**

CLAIMANT APPELLANT:



AGENCY:
DUA TOP Unit

Hearings Docket # [REDACTED]

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Pamela McCann, a review examiner of the Division of Unemployment Assistance (DUA), to deny extended training benefits to the claimant following her separation from employment. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

Following the claimant's separation from employment, she collected regular unemployment benefits with a benefit year expiration date of July 18, 2009. When these regular benefits were exhausted, she received federally funded extended benefits. On November 29, 2009, the claimant submitted an application for training benefits, under G.L. c. 151A, § 30(c), ("training benefits"), seeking 26 additional weeks of benefits while she attended a training program. In a determination issued on January 7, 2010, the DUA found the claimant ineligible for the additional 26 weeks of benefits. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the claimant, the review examiner affirmed the agency's determination and denied training benefits in a decision rendered on April 21, 2010.

Training benefits were denied after the review examiner determined that the claimant's training program was not approvable, under G.L. c. 151A, § 30(c). We accepted the claimant's appeal for review on the record. Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal.

The issue on appeal is whether the claimant's requested training program, which was approved for funding under the Workforce Investment Act (WIA), was therefore, deemed approved, under G.L. c. 151A, § 30(c).

Findings of Fact

The review examiner's findings of fact and credibility assessments are set forth below in their entirety:

1. The claimant initiated a new claim for unemployment benefits on July 25, 2008.
2. On November 29, 2009, the claimant submitted an incomplete application to attend training under Section 30(c) of the Law to the Division of Unemployment Assistance.
3. The training course for which the claimant applied to attend, dental assisting diploma, was being offered by Lincoln Technical Institute in Lincoln, Rhode Island.
4. The training facility agreement portion was not completed by the school.
5. The dental assisting diploma program offered by Lincoln Technical Institute is not approved under the Section 30(c) program of the Division of Unemployment Assistance.
- [6]. The claimant began the dental assisting diploma program course on November 12, 2009 and will end the course on November 2, 2010.

Ruling of the Board

The Board adopts the review examiner's findings of fact. In so doing, we deem them to be supported by substantial and credible evidence. However, we reach our own conclusions of law, as are discussed below.

The claimant sought these training benefits, under G.L. c. 151A, § 30(c), as amended by Stat. 2009, c. 30, §§ 1 and 2, which as written both at the time of her application and today, provides as follows:

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 26 times the individual's benefit rate, if such individual is attending an industrial or vocational retraining course approved by the

as an approved WIA course, was placed in the record as Exhibit 10.⁵ Since the DUA chose not to participate in the hearing, we accept this exhibit as the best available evidence that the claimant's training program had been approved under WIA and was so approved at the time of the hearing. "If the proponent has presented the best available evidence, which is logically adequate, and is neither contradicted nor improbable, it must be considered." New Boston Garden Corp. v. Board of Assessors of Boston, 383 Mass. 456, 471 (1981), *quoting* L.L. Jaffe, Judicial Control of Administrative Action 598, 608 (1965).

While the review examiner correctly found that the claimant's training course had not been approved by the DUA TOPS Unit, it must nonetheless be deemed to be an approved Section 30(c) program, under 430 CMR 9.05(2)(e).

We also must point out that the claimant may not be disqualified because she commenced her training program after the expiration of her benefit year. In a prior Board decision, BR-115277 (Dec. 6, 2010), we concluded that G.L. c. 151A, § 30(c), eliminates the benefit year ending date deadline for enrolling in training during any period when the economy is experiencing a deep enough recession to trigger extended or federal emergency benefit extensions. As we explained in that decision, we come to this conclusion in large part because G.L. c. 151A, § 30(c), on its face, requires that the normal 15-week deadline for applying for training is to be tolled whenever a Federal benefit extension is in effect. We continue to believe that it would be absurd to toll the application deadline during a period of extended or emergency benefits and not also extend the enrollment date. The benefit year enrollment deadline exists only in regulation⁶ and not in the statute, and the *only* deadline of any sort which can be found in the statute, the 15-week application deadline, is set aside when extended benefits are in effect. On November 12, 2009, when the claimant began her training program, Congress was funding both extended and emergency unemployment benefits.⁷ In light of this, the claimant was not subject to the benefit year ending date deadline.

We, therefore, conclude as a matter of law that the claimant's training program is approved, under 430 CMR 9.05(2)(e), that the claimant was permitted to commence her training after her benefit year expired, and that she may not be denied benefits, under G.L. c. 151A, § 30(c).

⁵ Exhibit #10, while not explicitly incorporated into the review examiner's findings, is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. 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).

⁶ 430 CMR 9.04(2)(d).

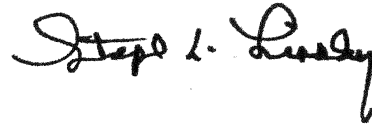
⁷ See The Worker, Homeownership, and Business Assistance Act of 2009, Public Law No. 111-92, enacted Nov. 6, 2009; Unemployment Insurance Program Letter No. 23-08, Change 5 (November 13, 2009).

The review examiner's decision is reversed. The claimant is entitled to training benefits, under G.L. c. 151A, § 30(c), commencing with the date that she began participating in the Lincoln Technical Institute's dental assistant program, if she is otherwise eligible.



John A. King, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF MAILING - August 4, 2011



Stephen M. Linsky, Esq.
Member

[Member/Chairman _____ did not participate in this decision.]

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

LAST DAY TO FILE AN APPEAL IN COURT – September 6, 2011