



COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF EMPLOYMENT AND TRAINING  
BOARD OF REVIEW  
Government Center  
19 Staniford Street  
Boston, MA 02114

*Another \$30  
victory,  
manica*

Tel. 626-6400  
Office Hours:  
8:45 a.m. to 5:00 p.m.

## DECISION OF BOARD OF REVIEW

In the matter of:

Appeal number:  
**BR-68643-CTRM**

### EMPLOYEE APPELLANT:

Office #23

On July 22, 1997, the Dorchester Division of the District Court Department, remanded this case, Civil Action #96-CV-0274 to the Board of Review. On Sept. 26, 1997, in Boston, Massachusetts, the Board reviewed the written record, the transcript and the recordings of the testimony presented at the hearing held by the Deputy Director's representative on Feb. 22, 1996.

The Board's decision of March 13, 1996, issued in accordance with the provisions of Section 41 of M.G.L. c. 151A, the Massachusetts Employment and Training Law, affirmed the Deputy Director's decision, issued on Feb. 28, 1996, which has denied benefits to the claimant. The claimant exercised her right of appeal to the courts under M.G. L. c.151A, s. 42. The case was remanded by the Dorchester District Court for a further review of the record and for the making of additional findings of fact.

The case was remanded by the Board on August 1, 1997, to the Deputy Director, in accordance with the Court Order. The case was returned with new consolidated findings of fact, to the Board of Review on Sept. 24, 1997.

The Board has now 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 Deputy Director's decision concluded that:

In accordance with Section 30 of the Law and the regulations at 430 CMR 9.04(2)(b), a claimant who applies. . .for training shall have his total benefits extended up to 18 times his benefit rate after exhaustion of all Extended benefits, Extended Unemployment Compensation, or other Federal Extended benefits. Such benefits shall be paid only. . .if the claimant. . .applies to the Commissioner for enrollment in training within the 15 weeks period, or within the extended period allowed in 430 CMR 9.06(2).

The 15 week period as defined in the regulations at 430 CMR 9.03 is the first 15 compensable weeks of a regular benefit claim. The fifteenth compensable week of the claimant's claim was the week ending September 20, 1995. The claimant's Application was filed on October 13, 1995, after the fifteenth compensable week of her claim.

It is recognized that the regulation at 430 CMR 9.06(c) provides that if DET fails to comply with the provisions of 430 CMR 9.07(3) (the requirement that DET provide each claimant with written information regarding eligibility for training benefits, including notification that application must be made no later than the first fifteen compensable weeks), then the fifteen week period may be tolled until the date the claimant learns of Section 30 benefits.

In this case, there can be no tolling of the fifteen week period. It is clear that DET complied with the requirement that they provide the claimant with written information in accordance with the regulation. According to the claimant's own testimony, she was provided with such written information on June 14, 1995, when she attended Orientation and was given the document titled "Answers and Questions Regarding Unemployment Insurance." The document was written in Spanish, the claimant's primary language. It is noteworthy that the claimant chose not to read the written document provided to her by the Department. There is no basis for any tolling of the time period.

Based on the above and the Law and regulations, this examiner has no alternative but to find that the claimant's application for Section 30 benefits cannot be accepted.

The claimant's application for Section 30 benefits is not accepted.

M.G.L.c. 151A, s. 30(c), 430 CMR 9.01, and 430 CMR 9.06(4)(d) are pertinent and provides 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 9.01:

##### **Purpose**

M.G.L.c. 151A, s. 30(c) allows claimant's to receive Unemployment Insurance (UI) benefits while enrolled in approved training. The purpose of 430 CMR 9.00 is to establish procedures and interpret the standards for approval of training programs (courses) and the eligibility of claimants to participate in such programs. In addition, 430 CMR 9.00 describe the conditions under which a claimant may be eligible to receive an extension of benefits up to 18 times his benefit rate if the training extends beyond his maximum monetary entitlement. The 18 week training extension is available only to those claimants who have applied to the commissioner for training no later than the 15th compensable week of the claim.

The general goal of M.G.L.c., s. 30(c) is to allow claimants to acquire the new skills necessary to obtain employment. M.G.L.c. 151A, ss. 24 and 25(c) pertaining to worksearch, availability for work and acceptance of suitable work, are waived if a claimant is otherwise eligible for UI and is enrolled in approved training.

#### 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:

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

The Deputy Director's representative held a hearing on February 22, 1996. The claimant was present with counsel. The Deputy Director's representative on September 22, 1996, made a further review of the record, as required by the remand order from the Board of Review; and then consolidated her final findings of fact as follows:

On May 31, 1997, [sic] the employer told the claimant that she was being laid off from her job and would be recalled to her job on August 1, 1995.

As of May 31, 1997 [sic], the claimant was not permanently separated from her job because she expected to be recalled to her job on August 1, 1995.

On May 31, 1995, the claimant filed a claim for unemployment benefits.

On May 31, 1995, the claimant filled out portions of an Application for Benefits.

The Application included the following question, "Have you been notified by an employer of a definite return to work date?". In response to that question, the claimant checked off "yes".

The Application included the following question, "What is your scheduled return to work date?". In response to that question, the claimant wrote "August 1, 1995".

The Application included the following question, "Are you CUSTOMARILY laid off and returned to work with the same or a different employer in your. . . Industry? Or Occupation? In response to that question, the claimant checked off "yes".

The Application contained a statement which read, ". . .I have received written materials which explain the Section 30(c) training program. . . IF I APPLY TO D.E.T. FOR TRAINING WITHIN THE FIRST 15 WEEKS OF MY CLAIM."

The claimant was told by a DET employee to write her initials under the above statement. The claimant did not receive written material which explained Section 30(c) when she wrote her initials under that above statement on May 31.

On June 14, 1995, the claimant attended an Orientation Session at DET.

The Orientation Session was conducted in English. The claimant attended the Session with someone who assisted her in understanding the Session.

As of June 14, the claimant spoke, understood and read a little English. Spanish was her primary language.

At the Orientation Session, the claimant received a document titled Answers and Questions regarding Unemployment Insurance. Among other things, the document stated that D.E.T. offers training programs while you are receiving unemployment benefits, if your training program is approved you could obtain an extension of your benefits, and the extension would only apply to those persons who presented their claim to be trained no later than the fifteenth week of his claim.

The copy of the above document which the claimant received was in Spanish.

The claimant did not read the above-referenced document.

On August 22, 1995, the claimant visited the Boston Worker's Assistance Center (after her cousin told her on August 20, 1995 that there were certain opportunities there). A Registration Intake Form was completed on the claimant's behalf on August 22, 1995.

On October 3, 1995, the claimant began attending school. On October 6, 1995, classmates spoke with the claimant about Section 30.

On or about October 9, 1995, the claimant reported to the Department and told a representative words to the effect that she wanted to apply for Section 30. A Department representative gave the claimant a Training Opportunities Program Application (the "Application") to be completed.

On October 13, 1995, the claimant returned the Application to the Department.

The Department issued to the claimant a Notice of Disqualification mailed November 9, 1995. The Notice stated that the claimant was ineligible to receive benefits under Section 30. . .because she failed to apply for training before the 15th week of her claim.

The fifteenth compensable week of the claimant's claim was the week ending November 11, 1995. This is the case because the 15-week application period. . .shall be tolled if. . .a claimant who is not permanently separated at the time of the initial claim (in this case, May 31, 1995) becomes permanently separated during the course of his benefit year (in this case, August 1, 1995), then the fifteenth week period shall commence on the date the claimant becomes permanently separated (in this case, August 1, 1995). As of May 31, when the claimant filed her initial claim, she was not permanently separated from her job. Rather, she was laid off with a recall date of August 1. On her Application, the claimant indicated this information. In addition, at the hearing, she testified to the information.

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:

In determining whether the claimant is eligible for an extension of benefits up to eighteen times her benefit rate, a threshold question under 430 CMR 9.01 is whether the claimant has applied to the Deputy Director for training within the first fifteen compensable weeks of the claim.

430 CMR 9.06(4)(d) requires the tolling of the fifteen-week period 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. In such a case this regulation provides that the fifteen-week period shall commence on the date that the claimant first becomes permanently separated.

In this instant case the claimant was temporarily laid off her job on May 31, 1995 with a recall date of August 1, 1995. The claimant, however, became permanently separated from her job on August 1, 1995. Since the claimant was not permanently separated from her job until August 1, 1995 the Board concludes that her fifteen-week application period must be tolled through the week ending Nov. 11, 1995 in accordance with 430 CMR 9.06(4)(d).

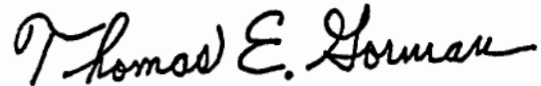
The Board further concludes that inasmuch as the claimant applied for this training on Oct. 13, 1995, she is in compliance with the fifteen-week compensable application period as required under the provisions of Section 30(c) and 430 CMR 9.01.

The Board modifies the Deputy Director's decision. The claimant is entitled to extended benefits of up to eighteen weeks of her benefit rate pursuant to Section 30(c) of the Law, if otherwise eligible.



Mark T. Haldane  
Chairman

BOSTON, MASSACHUSETTS  
DATE OF MAILING - OCT 02 1997



Thomas E. Gorman  
Member



Kevin P. Foley  
Member

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

LAST DAY - NOV 03 1997

kg