



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

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

30(c)
430 CMR
9:06(4)
9:07(3)

DECISION OF BOARD OF REVIEW

In the matter of:

Appeal number:

BR-270342

On February 4, 2000, in Boston, Massachusetts, the Board reviewed the written record and a recording of the testimony presented at the hearing held by the Deputy Director's representative on November 12, 1999.

On January 10, 2000, 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 for further review and to make subsidiary findings of fact from the record. The Deputy Director returned the case to the Board on January 28, 2000.

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 filed a claim for benefits on 04/20/99. The claimant received her fifteenth compensable payment of benefits during the week ending 08/21/99.

She completed and submitted an application for training opportunities on 10/13/99, her twenty-fourth compensable week. The claimant delayed her filing because the original career center had indicated she did not need training, based on her college degree and her employment history. She accepted the center's information. She did not submit an application until after a new career center told her to do so. The examiner accepts her explanation for her delay.

The claimant was given written information concerning the fifteen-week requirement when she received the booklet "Understanding Unemployment Insurance". She understood the time limit. The reason for her delay is not one of the four specific reasons listed under Regulation 430 CMR 9.06(4), which would allow for "tolling" of the time limit.

Therefore the claimant does not meet the requirements of Section 30 of the Law. The claimant is not entitled to an eighteen-week extension of her benefits while in an approved training program.

Section 30(c) of chapter 151A of the General Laws and 430 CMR 9.06(4), and 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 claimants 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:9.06(4): 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:

(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.

430 CMR:9.07(3): 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 November 12, 1999. The claimant appeared. The Board remanded the case to the Deputy Director for further review and to make additional findings of fact. The Deputy Director's representative then made the following consolidated findings of fact:

1. The claimant filed a claim for benefits on 04/20/99.
2. The claimant had been working as a nursing supervisor. She is a registered nurse.
3. She received the booklet "Understanding Unemployment Insurance". She was aware of the fifteen-week rule.
4. The claimant sought the assistance of a career center called "Future Works". She was ~~unable to~~ take training courses at this facility because she is allergic to the mold and mildew in the building.
5. The staff of this center informed her that she was not eligible for training under Section 30, at the end of June. A representative of the Department of Employment and Training had given her the same information on 06/03/99. That representative told the claimant she did not need to be trained based on her nursing background and her bachelor's in Human Services.
6. The claimant changed career centers to "Career Point", on 09/30/99. She discovered she could complete an application for training, at that time. The claimant changed career centers because she was unhappy with the services offered by "Future Works". All of her new job interviewers told her she needed to become computer literate before she would be hired.
7. The claimant submitted an application for Training Opportunities on 10/13/99, based on the advice of a new career center. Her training was scheduled to commence on 10/18/99. The training is scheduled to end on 01/21/00.
8. Her application was denied, on 10/20/99, because she failed to apply within her first fifteen compensable weeks. The claimant's fifteenth compensable weeks [sic] ended during the week ending 08/21/99.

9. She had initially been determined ineligible for benefits during the weeks ending 04/24/99 and 05/01/99. She served her waiting period the week ending 05/08/99.
10. The claimant is attending a training course named "Introduction to Word Processing."
11. The claimant was approved for a waiver of the work search requirements under section 24(b) and the requirements to accept suitable work under Section 24(c) of the Law, on 10/20/99. The training program was also approved on 10/20/99.
12. She also delayed filing for training because she hoped to find a job before she had to enter a formal training program.
13. The claimant does not have a medical condition, requiring a ten-pound lifting limitation.

The Deputy Director's representative made the following credibility assessment:

The claimant's contention, on appeal, she is unable to work directly with patients due to a ten-pound weight lifting restriction was not testified to, at the initial hearing. The claimant presented no evidence of such a restriction at the initial hearing.

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

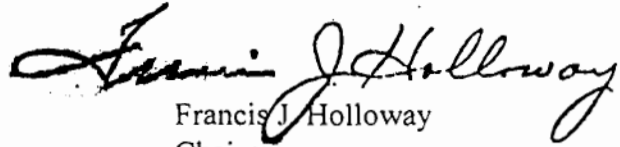
The claimant was aware that her application for extended benefits and training under Section 30(c) had to be submitted no later than the fifteenth compensable week of her claim. The findings show that the claimant took reasonable steps to comply with this requirement.


In June 1999, the claimant sought the assistance of both a career center counselor and a representative of the D.E.T, to apply for training. The claimant was advised by both of these representatives that she was not eligible for training because of her nursing background and the fact that she had a degree. As a result of this information the claimant did not apply for training within the fifteenth compensable week of her claim. After changing career centers on September 30, 1999, the claimant was informed by another representative that she could apply for training in order to become computer literate. Consequently, on October 13, 1999, the claimant filed an application for training to commence a DET approved course on October 20, 1999 called "Introduction to Word Processing."

The Board concludes that the claimant's failure to meet the application deadline was due to her reliance on the instructions given to her by both a counselor of a career center, which is an agent of D.E.T. as well as a D.E.T. representative. Consequently, the Board concludes that by giving the claimant misinformation, the D.E.T. failed to comply with the provisions of 430 CMR 9.07(3), and the fifteen-week application period should be tolled under the provisions of 430 CMR 9.06(4)(c).

The decision of the Deputy Director is modified. The claimant is entitled to Section 30 benefits up to 18 weeks, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF MAILING - FEB 16 2000


Francis J. Holloway
Chairman


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 - MAR 20 2000

ad