CHAPTER 13
CAREER AND RELATED TRAINING

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2.13.1 INTRODUCTION

Labor Law § 599 makes it possible for claimants to receive benefits while attending training courses that have been approved by the Department of Labor. The regulations governing the statute are found at 12 NYCRR Part 482. “The intent of the statute is to return the unemployed worker to the labor market with the necessary skills required to provide the claimant with the opportunity to secure employment of a substantially equal or higher skill level than the claimant's past employment.”[1] Under the statute, claimants in approved training may receive up to 26 weeks of additional unemployment insurance benefits. In addition, such claimants are relieved from the requirements relating to searching for work and refusal of offers of employment.

2.13.2 APPLICATION FOR CAREER AND RELATED TRAINING

The Claimant Handbook advises claimants to contact the Career Center as soon as possible if the claimant is interested in training but has not yet enrolled. The handbook also advises claimants to submit a § 599 application as soon as they are accepted into training.[2] The number of additional weeks of unemployment insurance benefits a claimant is entitled to, if training is approved, is twice the number of effective days of benefits that remain in the claimant's benefit year at the time the claimant first applies for approval.[3]

Pursuant to Labor Law § 599 (2) (a) the number of effective days of additional benefits a claimant may be entitled to is measured from the date the claimant “demonstrates application for appropriate training.” Pursuant to NYCRR § 482.2 “demonstrates application for appropriate training means the date on which the claimant applied in writing for an approved training course which accepted the claimant and was approved for the claimant.” A claimant has “demonstrated application for appropriate training” when the claimant's completed, written application is received by the Department of Labor, not when the application is mailed or eventually approved.[4]

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[1] 12 NYCRR § 482.1

[2] See Unemployment Insurance: A Claimant Handbook, p.37 (June 2018)

[3] Labor Law § 599 (2) (a); *see also* Appeal Board No. 541092 (claimant did not submit a completed and signed application until one week prior to the exhaustion date of his 26 weeks of benefits and was therefore entitled to only two weeks of additional benefits).

[4] *See, e.g.,* Appeal Board No. 530967-A (claimant sent her application to the Department of Labor on July 22, 2005, and it was received by the Department of Labor on August 1, 2005; the claimant “demonstrated application for appropriate training” on August 1, 2005).

At the time the claimant applies for career and related training approval the claimant must have already been accepted into a training course.[5] Additionally, the claimant must still have effective days of regular unemployment insurance benefits to be claimed. There is no legal authority to excuse a delay in submitting an application for training approval after a claimant's regular benefits are exhausted.[6]

2.13.3 APPROVAL OF CAREER AND RELATED TRAINING

The § 599 program is funded with up to $20 million per year. Training funding is provided statewide to claimants attending approved training on a first come, first served basis, until the $20 million is exhausted. There are no regional or categorized funding allotments.[7] Claimants whose training programs are not approved solely due to insufficient available funds in the current year have priority to receive additional benefits when funds become available again, if the claimant is still attending approvable training.[8]

Labor Law § 599 (1) provides that the commissioner shall not approve training for a claimant unless at least one of the enumerated statutory factors listed is present.[9] However, even where one of the factors listed in the statute for the training to be approved is present, that does not mean the training must be approved.[10]

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[5] *Matter of Schumer,* 44 A.D.3d 1139 (3d Dep't 2007) (claimant applied for § 599 training approval for a nursing program in October 2005, but was not accepted into the program until December 2005; as the claimant was not yet enrolled in a program, she did not have an approved training program as required).

[6] *Matter of Simpson,* 158 A.D.3d 879 (3d Dep't 2018 (claimant applied for § 599 training approval more than a month after his benefits were exhausted); *see also Matter of McFowler*, 62 A.D.3d 1132 (3d Dep't 2009) (claimant applied for § 599 training approval 10 days after his benefits were exhausted).

[7] Labor Law § 599 (2) (c)

[8] 12 NYCRR §§ 482.6

[9] *See* Labor Law § 599 (1). The statutory factors are also addressed in the sections, below.

[10] Appeal Board No. 530124 (claimant, a property manager, applied for approval of training in a medical biller/medical assistant program; her occupation was not impaired and even if the training would have enabled her to obtain more regular long-term employment [another statutory factor], Board found that approval is not mandated, writing "The courts have also held that § 599 does not automatically grant benefits to a claimant, holding that 'the effect of the statute is that, if certain conditions exist, the Commissioner in his discretion after considering certain enumerated circumstances and all other relevant facts, may approve or disapprove a claimant for a vocational training course") (citing *Matter of Van Teslaar*, 41 A.D.2d 102 (3d Dep't 1973), *aff'd* 35 N.Y.2d 311 (1974)).

SUBSTANTIALLY IMPAIRED

For an application to be approved for career related training, there must be evidence that employment opportunities in the claimant's current occupation are substantially impaired. Personal considerations or factors, such as a desire to change careers,[11] a desire to move one's career in another direction,[12] or difficulty finding employment or an inability to obtain employment at a salary commensurate with one's experience in an occupation,[13] will not lead to approval of training if there is no impairment of the claimant's current occupation.

Pursuant to Labor Law § 599 (1), the Commissioner of Labor "shall give due consideration to existing and prospective conditions of the labor market in the state, taking into account present and anticipated supply and demand regarding the occupation or skill to which the training relates, and to any other relevant factor." When considering the existing and prospective market conditions in the state, the New York State Department of Labor (DOL) relies on employment projections[14] and the United States Department of Labor (USDOL) Occupational Outlook Handbook[15] for specific periods of time. The DOL will consider not only the current and prospective market conditions for the occupation or skill for which training approval is sought, but also for the claimant's current occupation. In several cases, anecdotal evidence from the claimant about his or her difficulties with finding work in his or her current occupation has been found to be

[11] *See Matter of Giglio,* 242 A.D.2d 844 (3d Dep't 1997) (claimant, an electrical engineer, sought training approval to become a patent attorney; application was properly denied where training would not upgrade the claimant's existing skills as an electrical engineer and the occupation of electrical engineer was not impaired); *Matter of Moore,* 64 A.D.3d 1112 (3d Dep't 2009), (claimant's training approval application was denied where her reason for training was because she felt she made the wrong career choice, was no longer motivated to work as an accountant, and wished to become an interior designer).

[12] Appeal Board No. 565582. (Claimant, a physician, was employed as a director of planning, coded by the DOL as occupation of management analyst was not considered impaired by DOL. He wanted to work in biomedical informatics and applied for training approval for a master's degree in that discipline. The Board held that the claimant's interest in expanding his career in a different direction does not serve as grounds to approve training under the statute).

[13] Appeal Board No. 562661. (claimant's application for training approval was properly denied where her current occupation as an administrative assistant was not impaired; Appeal Board held that although the claimant may have found it difficult to obtain work, she did not present evidence that the DOL's Occupational Outlook statistics for administrative assistants were incorrect); Appeal Board No. 553936A. (claimant's application for training approval was properly denied despite his contentions that he could not find work that would pay him commensurate with his 20-years sales experience as the DOL's Occupational Outlook projected an increase in sales account/sales representatives).

[14] The full employment projections document can be viewed on the DOL's website**,** https:**//**www.labor.ny.gov**/**home, by clicking on the Government and Research tab and the employment projections sub tab, or by accessing the employment projections directly by going to http://labor.ny.gov/stats/lsproj.shtm (site last visited June 24, 2019).

[15] The Occupational Outlook Handbook can be accessed at https://www.bls.gov/ooh/ (site last visited June 24, 2019)

insufficient to overcome the data contained in the Occupational Outlook Handbook, even without testimony authenticating the documents.[16]

The New York State employment projections and the USDOL Occupational Outlook Handbook rely in part on information from the Occupational Employment Statistics (OES) survey[17] which is sent to 57,000 New York employers to determine, among other things, how many individuals they employ in each occupation. New York State employment projections cover a 10-year period and are updated every other year. The employment projections for any particular occupation provide, among other statistics, the number of positions available in the state for that occupation in the first year of the 10-year period, the number of positions that are projected to be available in the 10th year of the period, the percentage change over the period, salary information, educational requirements, whether work experience is needed, if on the job training is necessary, and if employment prospects for that occupation during the period are favorable or unfavorable.

The USDOL Occupational Outlook Handbook provides information similar to the New York State employment projections statistics, showing the number of positions available in that occupation in the 1st year, the number of positions that are projected to be available in the 10th year, the percentage change between the 1st and the 10th year and the numeric change in the number of the positions from the 1st to the 10th year. It likewise provides information on the type of training required, if any, educational requirements and potential earnings.

Training approval may be denied when the claimant's intended occupation following training would itself be impaired;[18] or where there is growth in both the claimant's current occupation and the claimant's intended occupation.[19]

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[16] *See, e.g.,* Appeal Board No. 581825 (claimant, a physical therapist assistant (PTA), applied for training approval to become a licensed massage therapist (LMT). Department of Labor employment DOL employment prospects for PTAs in the claimant's region were very favorable; absent a specific, valid argument that the statistics were incorrect, claimant's testimony that she had heard that PTAs were being laid off and not replaced was not more reliable than the Department of Labor's statistical evidence) (citing Appeal Board Nos. 562661, 530423 and 528656)

[17] For more information on the OES survey, visit https://www.bls.gov/oes/home.htm (site last visited June 24, 2019)

[18] *See* Appeal Board No. 553200 (claimant sought approval for training leading to the occupation of reporter; Department of Labor's Occupational Projects for the next 10-year period showed a decline in the number of reporter positions available; the training would not lead to more regular long-term employment).

[19] *See* Appeal Board No. 527178 (claimant, who had been the manager of a rental center, sought approval of a degree program in secondary education; the occupations of secondary teachers and managers of retail workers both showed future growth).

UPGRADE EXISTING SKILLS OR LEAD TO MORE REGULAR LONG-TERM EMPLOYMENT IN SPECIFIC OCCUPATION

An application for training can only be approved where the claimant offers a specific career goal and is enrolled in training for a specific occupation.[20] Applications indicating a claimant wishes to work in administration,[21] business administration,[22] marketing,[23] real estate[24] have all been found to be too general in nature to meet the requirements of Labor Law § 599. Thus, training that is general in nature and may prepare a claimant for many different occupations will not be approvable. Approvable training is that which when completed will have provided the claimant with the skills and competencies to obtain work in the claimant's intended occupation, without further training being necessary.

College degrees in general studies or individual studies have been held to be too general in nature and do not lead specifically to a career in a designated occupation, even though the claimants had intended to try to obtain work in specific occupations after their training was completed. For example, training approval has been denied for a bachelor's degree in general studies;[25] for an

[20] *See Matter of Vasquez,* 42 A.D.3d 622 (3d Dep't 2007) (§ 599 benefits "have been denied where the claimant's course of study has been in a general program not linked to a specific type of job") (citing *Matter of Schroder,* 38 A.D.3d 1142 (3d Dep't 2007); *Matter of Alduen,* 26 A.D.3d 579 (3d Dep't 2006); *Matter of Romain,* 8 A.D.3d 869 (2004)).

[21] *See* Appeal Board No. 547474 (DOL found claimant's application for training approval with the occupational goal of "administration" course study leading to a bachelor's degree in business administration to be too general).

[22] *See* Appeal Board No. 552083 (associate's degree in business administration is too general and does not lead to a specific occupation) (citing 533280 and *Matter of Vasquez,* 42 A.D.3d 622 (3d Dep't 2007).

[23] *See* Appeal Board No. 539469 (DOL found claimant's application for § 599 training approval with the occupational goal of "marketing" to be too general where he was in a program which would result in a bachelor's degree in Applied Sciences Marketing, was unsure of his plans following graduation and his course of study could lead to careers in marketing, advertising, public relations, and promotional opportunities).

[24] *See* Appeal Board No. 543749 (DOL found claimant's application for § 599 training approval with the occupational goal of "real estate" to be too general where she enrolled in a program consisting of classes in real estate salesperson licensing, brokers' licensing, appraising, property management, continuing education, and a notary class; she did not know which specific area of real estate she would enter following completion of the classes and was planning on making that decision when she finished classes).

[25] Appeal Board No. 586564 (former Army transportation officer hoped to return to the Army after obtaining his degree, which would qualify him for continued service).

associate's degree in individual studies;[26] for job placement classes which assist attendees with general resume writing and job interview techniques;[27] and liberal arts prerequisite courses.[28].

FULL-TIME ATTENDANCE AT TRAINING

The regulations provide, in part, that career and related training consist of one or more approved training courses or activities which require attendance at training for at least 12 hours in each week.[29] Although not reflected in the current regulations, Department of Labor publications, such as the frequently asked questions on the website and the fact sheet on the § 599 program, also indicate that training can be approved if the claimant's program consists of "12 registered credit hours per semester."[30]

Historically, the Board and Court have found that the requirement of "12 hours in each week" related to the number of hours of instruction in a structured classroom setting.[31] However, the Department of Labor's interpretation of this requirement appears to have recently changed, likely in response to the increasing popularity of online educational classes. While the Board has not yet squarely addressed the issue, it has recognized that there is a new analysis; namely that the facility in which the claimant enrolls must require students to complete a minimum of 12-hours of

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[26] *See Matter of Schroder*, 38 A.D.3d 1142 (3d Dep't 2007) (claimant's goal was to become an administrative assistant, but her degree would not lead to a specific occupational goal).

[27] *See Matter of Wasserman,* 251 A.D.2d 883 (3d Dep't 1998).

[28] *See Matter of Romain,* 8 A.D.3d 869 (3d Dep't 2004) (claimant's goal was to become a nurse; the liberal arts prerequisite courses she was taking were not part of the actual nursing program); Appeal Board No. 529884 (claimant, a construction project manager, applied for § 599 training approval leading to an associate's degree in business administration, which would prepare the claimant for many occupations, but not specifically for a career in construction project management).

[29] 12 NYCRR 482.2 (b).

[30] https://www.labor.ny.gov/ui/claimantinfo/599Program.shtm#5992 (site last visited June 17, 2019); https://www.labor.ny.gov/formsdocs/factsheets/pdfs/P599.pdf (site last visited June 17, 2019).

[31] *See Matter of Winston,* 307 A.D.2d 574 (3d Dep't 2003) (Court found reasonable Board's denial of training approval for claimant based on interpretation of "attendance at training for at least 12 hours in each week" to require some attendance in structured institutional setting; claimant who was enrolled in an online 5-credit college course and who spent at least 50 hours per week on his studies, did not have to attend classes or receive formal instruction); *Matter of Lohman,* 6 A.D.3d 916 (3d Dep't 2004) (§ 599 training approval was denied where a claimant was registered for 12 credit hours of course work, but was only scheduled to attend approximately 9 hours of structured classroom instruction per week); Appeal Board 544826 (§ 599 training approval was denied where claimant was registered for 12 credit hours online, was required to spend time in online discussions with classmates three times each week but was only required to spend 3 hours actually viewing a lecture); Appeal Board No. 544493 (denial of training application where claimant was enrolled in a self-paced Master's program in which he viewed DVD's for the courses, took tests online and communicated with the instructor via email since claimant's training program was not conducted in a structured institutional setting).

weekly study and must provide some means of verifying that such hours of study were completed in order for the training application to be approved.[32]

The 12-hour requirement must be for classes that are within the claimant's approved program. For example, where a claimant was registered for 12 credit hours, but only 9 of those hours were at the school that would award his Master's degree, the 3 other credit hours did not count towards the 12-hour minimum requirement for training approval because it was not part of his Master's degree training and he was not required by the school conferring his Master's degree to take the course.[33] Additionally, the 12-hour requirement must be maintained throughout the training approval period. Training approval has been found to be properly withdrawn where the claimant is not consistently taking the appropriate number of instructional hours.[34]

THE TRAINING MUST BE COMPLETED IN 24 MONTHS

Labor Law § 599 (1) (c) and 12 NYCRR 482.2 provide that in order to be approved the claimant's training must not require more than 24 months to complete. The 24-month time frame is measured from the date the DOL received the claimant's written and completed application for training approval.[35]

The duration of a training program for many occupations may exceed 24 months, but the training can still be approved if the claimant applies for training approval at the point when there are 24 months or less of training remaining.[36]

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[32] *See* Appeal Board 605496 *aff'g* A.L.J. Case No. 019-01537 (denying the claimant's application for § 599 training approval for online course because the claimant did not meet the Department of Labor's requirements that the facility in which the claimant enrolls must require students to complete a minimum of 12-hours of weekly study and provide some means of verifying that such hours of study were completed).

[33] Appeal Board No. 545626

[34] *See Matter of Delago,* 10 A.D.3d 840 (3d Dep't 2004) (claimant's approval for § 599 training was withdrawn after one semester because she was only required to be in the classroom 10 hours per week in the subsequent semester); Appeal Board No. 555624 (claimant's approval for training was withdrawn because while she had initially been enrolled in over 12 credits, she was forced to defer a chemistry course which resulted in her only being enrolled in 9 credits)

[35] *See Coscia v Ross,* 70 A.D.2d 758 (3d Dep't. 1979) (duration of a training course properly measured from the date of the application for approval); Appeal Board No. 542026 (claimant's application for training approval was denied where she applied for training approval on February 11, 2008 but training program would not be complete until May 2010, as it would take more than 24 months to complete).

[36] *See Coscia v. Ross*, *supra* (claimant was enrolled in a 65-week training course and applied for § 599 training approval when there were less than 14 months of training remaining; the court held that the time remaining in a training program at the time the claimant applies for § 599 training approval is the measure of time to consider when determining whether the training is approvable, not the entire length of the training program).

If training is approved based on information received by the DOL that the training will be completed in 24 months or less, but that information later turns out to be inaccurate and the training will extend beyond 24 months, the training approval will be withdrawn.[37]

As training must clearly lead to the qualifications or skills for a specific occupation, the Appeal Board has consistently held that the claimant must have reached the ultimate educational goal upon the completion of the training within 24 months. Training will not be approved for interim occupations or stepping stones that may eventually lead to the claimant's ultimate educational goal.[38]

APTITUDE TO COMPLETE TRAINING

Labor Law § 599 (1) (d) provides that training shall not be approved for a claimant unless the claimant has the required qualifications and aptitudes to successfully complete the training. Labor Law § 599 (2) (a) requires that certification of continued satisfactory participation and progress in the claimant's training must be submitted to the Commissioner of Labor prior to benefits being paid. The Commissioner of Labor's regulations at 12 NYCRR 482.4 and 482.5 contain similar provisions. Following the approval of training benefits claimants are required to periodically provide the DOL with evidence showing their satisfactory progress in their course of training. Information regarding the claimant's participation and progress may also be requested from the claimant's training program. If it is determined that the claimant is not making satisfactory progress or does not have the aptitude to complete the training the training approval will be withdrawn.

Pursuant to 12 NYCRR 482.5 the commissioner has discretion to consider relevant factors to disapprove training to prevent the inappropriate use of unemployment insurance funds. One such factor set out in the regulation is if the claimant does not demonstrate that he or she is achieving the competencies being taught.[39]

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[37] *See* Appeal Board No. 557269 (claimant applied for training on April 14, 2009 and indicated her training would be completed on January 26, 2011, based on information she had from her school that her stenography program was a two-year program; information subsequently obtained from the school revealed that the the claimant's training would not be completed until September 2011).

[38] *See, e.g.,* Appeal Board 543604 (claimant, whose ultimate occupational goal was optometry, was denied approval for her biology degree, as training to reach her ultimate goal would have taken four years).

[39] *See* Appeal Board No. 541831 (claimant's approval for § 599 training to become a computer programmer was terminated after he failed a course in computer programming, stopped attending another class and attempted to withdraw from a third class).

2.13.4 MAINTAINING ELIGIBILITY

Claimants are put on notice of their responsibility to advise the DOL of any changes to their approved training or training facility at the time they receive approval for training. Failing to advise the DOL of a change in the claimant's training program, occupational goal or facility has resulted in training approval being withdrawn.[40]

[40] *See Matter of Mullane*, 164 A.D.3d 984 (3d Dep't 2018) (claimant's approval for training at New York University was terminated after he failed to advise the Department of Labor he was taking a summer course at Cornell University); Appeal Board No. 591818 (claimant properly found ineligible for benefits where he changed course of study and failed to inform the appropriate DEWS 599 Central Review Unit of the changes); Appeal Board No. 557393 (claimant was approved for a program given by SUNY Empire State College to earn an associate's degree leading to her goal of parent coordinator; approval was terminated after she transferred to New York University to obtain a bachelor's degree in psychology without notifying the Department of Labor of the change).