

Claimant exempt from the work search and availability requirements of G.L. c. 151A, § 24(b) during the period for which he was approved for training benefits under G.L. c. 151A, § 30(c). Additionally, despite going to school full-time, the claimant was available to work full-time between 2 pm and 11 pm, and he was actively looking for work that he had experience doing and which offered shifts during those hours.

**Board of Review
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Issue ID: 0020 8660 56

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Stephen A. Dougal, a review examiner of the Department of Unemployment Assistance (DUA), to deny unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant filed claims for unemployment benefits with the DUA on March 22, 2016, and March 24, 2017. On February 17, 2017, the DUA denied benefits to the claimant pursuant to G.L. c. 151A, § 24(b), for the period beginning January 15, 2017. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by the claimant, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on March 24, 2017. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not available for work and, thus, was not eligible for benefits, under G.L. c. 151A, § 24(b). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we remanded the case to the review examiner to obtain additional testimony and other evidence pertaining to the claimant's availability for work while attending school. The claimant attended the remand hearing. Thereafter, the review examiner issued his consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue on appeal is whether the review examiner's conclusion that the claimant was not entitled to benefits because he did not meet the requirements of G.L. c. 151A, § 24(b), is supported by substantial and credible evidence and is free from error of law, where the consolidated findings show that the claimant was available for work outside of his school hours, and he was subsequently approved for training benefits, under G.L. c. 151A, § 30(c).

Findings of Fact

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

1. In 2011, the claimant, while working full time, took a 3-credit college summer course.
2. In the Fall of 2015, the claimant, while working full time, took two courses at a community college, 3 credits each for a total of 6 credits.
3. On January 16, 2017, the claimant began a heating, ventilation and air conditioning certificate program (HVAC) scheduled to be completed on January 14, 2018.
4. On January 18, 2017, the claimant separated from his employer.
5. On January 27, 2017, the Department of Unemployment Assistance issued the claimant a Notice of Disqualification determining the claimant was not entitled to receive benefits for the period beginning January 15, 2017 and for an indefinite period thereafter until he meets the requirements of the law, because the claimant had not demonstrated a prior history of both studying and working full-time.
6. The claimant attends class 5 ½ hours (7:15 a.m. to 12:45 p.m.) Monday through Friday, for a total of 27.5 class hours per week.
7. On Sunday, the claimant spends about 15 minutes doing homework, which may include reading or math problems.
8. On occasion, the claimant may spend an additional 15 minutes doing homework on Monday.
9. The claimant is available for work 2nd shift, 2:00 p.m. to 11:00 p.m.
10. The claimant does not have other responsibilities that reduce his availability during the hours he is not in school.
11. The claimant searched for full-time work as a fork lift operator, in hotel housekeeping, in retail, and as a general laborer; positions in which he has experience and is qualified to perform.
12. Work as a fork lift operator, in hotel housekeeping, in retail, and as a general laborer are the types of work available during the hours the claimant is not in school.
13. The claimant made work search contacts on at least 3 different days of each week he has claimed benefits through March 4, 2017. (Remand Exhibit 8)

14. On April 6, 2017, the claimant was approved for Section 30 training benefits between February 19, 2017 and January 12, 2018. (Remand Exhibit 7)

15. The claimant, who had worked full-time as an assistant manager for a retail store, did not have a prior history of attending school full-time while working a full-time job.

Ruling of the Board

In accordance with our statutory obligation, we review the examiner's decision to determine: (1) whether the consolidated findings of fact are supported by substantial and credible evidence; and (2) whether the original conclusion that the claimant is not entitled to benefits is free from error of law. Upon such review and as discussed more fully below, the Board adopts the review examiner's consolidated findings of fact. In adopting these findings, we deem them to be supported by substantial and credible evidence. However, we conclude that the consolidated findings support an award of benefits to the claimant.

Since the review examiner determined that the claimant was not available for full-time work, this case is governed by G.L. c. 151A, § 24(b), which provides, in pertinent part, as follows:

An individual, in order to be eligible for benefits under this chapter, shall . . . (b)
Be capable of, available, and actively seeking work in his usual occupation or any other occupation for which he is reasonably fitted

In his decision, the review examiner concluded that the claimant was not available for full-time work because he was in school full-time and did not have a prior history of both going to school full-time and working full-time. We disagree with this conclusion because the lack of such a history does not automatically render a claimant incapable of both working and going to school full-time at the time he files his claim. In order to determine a claimant's availability, several factors must be considered on a case-by-case basis. Here, after remand, the review examiner found that the claimant was available for work between 2:00 p.m. and 11:00 p.m., and he had been actively searching for work he had experience in and which typically had shifts during the hours the claimant was available. Since the claimant's capability was not at issue in this case and the consolidated findings show he was available for and actively searching for work, we conclude that the claimant met all of the requirements of G.L. c. 151A, § 24(b), and, therefore, he is entitled to benefits as of the week ending January 21, 2017.

Furthermore, we take administrative notice that, on April 6, 2017, the DUA determined that the claimant was eligible for unemployment training benefits, under G.L. c. 151A, § 30(c), between February 19, 2017, and January 12, 2018. *See* Issue ID 0021 1757 46. Approval for benefits under G.L. c. 151A, § 30(c), results in a waiver of the work search and availability requirements of G.L. c. 151A, § 24(b). 430 CMR 9.01. Thus, even if the claimant stopped meeting the availability and work search requirements of G.L. c. 151A, § 24(b), he cannot not be disqualified from receiving benefits during the period for which he has been approved under G.L. c. 151A, § 30(c).

The review examiner's decision is reversed. The claimant is entitled to receive benefits as of the week ending January 21, 2017, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - July 26, 2017



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

Member Judith M. Neumann, 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.

SVL/rh