

Although the claimant was participating in a 30-hour per week online school program, she proved that she was able, available for, and actively seeking full-time work. She is eligible under G.L. c. 151A, § 24(b).

**Board of Review
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Issue ID: 0021 3181 94

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Rorie Brennan, 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 we affirm on part and reverse in part.

The claimant separated from employment and was initially approved for unemployment benefits, effective December 25, 2016. However, in a determination issue by the DUA on April 5, 2017, the claimant was disqualified from receiving further benefits, beginning March 5, 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 determination and denied benefits in a decision rendered on August 30, 2017. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant did not show that she was available for full-time work, and, thus, she was disqualified 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 more evidence about the claimant's availability for full-time work and her efforts to find a job. The claimant attended the remand hearing and, thereafter, the review examiner issued her consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's original conclusion that the claimant was unavailable for full-time work while participating in a 30-hour per week online school program is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. On 12/29/16, the claimant filed a claim for unemployment benefits with an effective date of 12/25/16.

2. The claimant has no medical or physical issues that restrict her ability to work.
3. Since 03/05/17, the claimant has been attending an online full time academic program. The program is accelerated and consists of 30 hours of course work per week.
4. Beginning 03/05/17, if the claimant were offered full time work, she would have accepted it even if it meant she had to reduce or quit her academic workload.
5. On 03/06/17, the claimant began working part time for a temporary agency performing accounting and data entry Monday through Friday from 10:00 a.m. – 2:00 p.m.
6. The claimant earned \$12.00 per hour (\$240 per week average) at this job.
7. The claimant reported her earnings to the DUA every week.
8. While working part time for this employer, the claimant continued to seek full time employment.
9. While working part time, the claimant continued to attend her training program for 30 hours of course work per week.
10. On 06/26/17, the claimant began working full time for the temporary agency for the same client employer performing the same job duties.
11. Beginning 06/26/17, the claimant worked 30 hours per week: Monday through Friday 10:00 a.m.–4:00 p.m.
12. Beginning 06/26/17, the claimant earned \$12.00 per hour (\$360 per week average) at this job.
13. The claimant continued to attend her training program for 30 hours of course work per week.
14. As of 07/17/17, the claimant was hired full time (35 hours per week) by the client employer.
15. The claimant does not have a prior history of working full time while attending school full time.
16. The claimant twice indicated on DUA questionnaires that she was not available to work full time because she “thought it was what she was supposed to put on the questionnaire.”

17. From 03/05/17 through 06/10/17, the claimant looked for work “daily.” The claimant looked for work online, through networking, and through a staffing agency.
18. From the week beginning 06/11/17, the claimant was not actively looking for work.
19. On 04/05/17, the local office issued the claimant a Notice of Disqualification for the period beginning 03/05/17 and indefinitely because she failed to demonstrate a prior history of both studying and working full time.

Credibility Assessment:

The Review Examiner held the record open following the 10/26/17 Remand Hearing to allow the claimant the opportunity to submit a work search log as requested by the Board of Review. The Review Examiner reconvened the hearing on 02/02/18 to question the claimant about the submitted log. Although the claimant failed to record details (including the dates of the days she looked for work each week), her testimony was credible and supports the conclusion that she was searching for work a minimum of three days each week beginning 03/05/17 through 06/10/17.

Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the consolidated findings are supported by substantial and credible evidence; and (2) whether the review examiner’s original conclusion is free from error of law. After such review, the Board adopts the review examiner’s consolidated findings of fact and credibility assessment except as follows. In Consolidated Finding of Fact # 10, it is inaccurate to state that the claimant worked full-time beginning June 26, 2017, when Consolidated Finding of Fact # 11 shows that she worked only 30 hours per week. Additionally, the portions of Consolidated Findings ## 17 and 18, which indicate that the claimant stopped looking for work with the week ending June 10, 2017, is inaccurate insofar as the evidence showed that the claimant continued to actively search for a job during the following week.¹ In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, we disagree with the review examiner’s legal conclusion that the claimant was unavailable for full-time work.

The question on appeal is whether the claimant has presented sufficient evidence to show that she met the requirements of 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

¹ During the remand hearing, the claimant’s work search log, Remand Exhibit # 6, supported her undisputed testimony that she continued to actively look for a full-time job during the week ending June 17, 2017. Because the claimant did not certify for benefits during this final week, the error is not material to our decision.

The DUA initially disqualified the claimant because she did not have a history of both working full-time and going to school full-time. Although a history of working full-time while attending school full-time can be an indication that a person could meet the requirements of G.L. c. 151A, § 24(b), even while in school, we have previously held that having such a history is not the only way a claimant can meet this burden. Attending school full-time does not result in a *per se* disqualification, or a presumption that a person cannot be available for full-time work. Each case must be considered individually. *See* Board of Review Decision 0011 9491 62 (Feb. 19, 2015), *citing* Board of Review Decision BR-106530 (June, 2008)². Because the review examiner concluded that the claimant did not prove that she remained available for full-time work, she also denied benefits.

After remand, the consolidated findings now show that the claimant was able, available for, and actively seeking full-time work during the period March 5, 2017, through June 17, 2017. Specifically, Consolidated Finding # 2 states that the claimant had nothing that restricted her ability to work. Because the claimant would have accepted an offer of full-time work beginning March 5, 2017, even if it meant reducing or stopping her academic program, we are also satisfied that she was available for full-time work during the same period.³ *See* Consolidated Finding # 4. Finally, through her work search log and further testimony, the claimant has established that she actively searched for a full-time job during the same weeks. *See* Consolidated Finding # 17. Because the claimant did not certify to collect any unemployment benefits after the week ending June 10, 2017, it is of no consequence that she stopped actively look for work after the week ending June 17, 2017. *See* Consolidated Finding # 18 and note 1, *supra*.

We, therefore, conclude as a matter of law that the claimant satisfied the requirements under G.L. c. 151A, § 24(b), to be capable of, available for, and actively seeking work while she was also in school during the period March 30, 2017, through June 17, 2017.

The portion of the review examiner's decision that disqualified the claimant from March 5, 2017, through June 17, 2017, is reversed. The claimant is entitled to receive benefits for this period, if otherwise eligible.

² Board of Review Decision BR-106530 is an unpublished decision, available upon request. For privacy reasons, identifying information is redacted.

³ Having listened to the transcript, we also accept the claimant's explanation that she was genuinely confused about how to respond to the fact-finding questionnaires, when she answered that she was not available for full-time work. *See* Consolidated Finding # 16.

The portion of the review examiner's decision that disqualified the claimant, beginning June 18, 2017, is affirmed. The claimant is denied benefits for the week beginning June 18, 2017, and for subsequent weeks, until such time as she meets the requirements of the law.

BOSTON, MASSACHUSETTS
DATE OF DECISION - February 26, 2018



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

**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.

AB/rh