

Full-time student established that she was available for work evenings and all day on weekends and Mondays. She also proved that she actively searched for work in occupations that hired people to work during those hours. She is eligible under § 24(b).

**Board of Review
19 Staniford St., 4th Floor
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member**

Issue ID: 0021 5678 61

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 reverse.

The claimant separated from employment and filed an unemployment claim, effective April 16, 2017. In a determination issued on May 10, 2017, the DUA denied her claim for benefits. 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 August 18, 2017. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not 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 further evidence concerning the claimant's availability for work outside of school hours, and the type of work for which she searched. 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 not available for full-time work while she was in school 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 04/16/17, the claimant filed a claim for unemployment benefits with an effective date of 04/16/17.
2. The claimant has no medical or physical issues that restrict her ability to work.
3. Since filing for unemployment benefits, the claimant has been attending a full time academic program at a local community college.
4. The claimant does not have a prior history of working full time while attending school full time.
5. While working at her previous part time job (30 hours per week), the claimant attended school full time.
6. The claimant attends school Tuesday through Friday from 6:30 a.m. until 2:30 p.m.
7. The claimant is available to work 2nd shift Tuesday through Friday; the claimant is available to work any shift on Saturday, Sunday, and Monday.
8. Since filing for unemployment, the claimant has looked for work a minimum of four days per week. The claimant is looking for work online and going to businesses in person to inquire about job opportunities.
9. The claimant is seeking work in retail, customer service, health care, telemarketing, or in a hotel or nursing home. These jobs are jobs that the claimant can work when not attending class.
10. On 05/10/17, the local office issued the claimant a Notice of Disqualification for the period beginning 04/16/17 and indefinitely because she failed to demonstrate a prior history of both studying and working full time.

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. Upon such review, the Board adopts the review examiner's consolidated findings of fact and deems 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 is ineligible for benefits.

The question on appeal is whether the claimant has shown that she has 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

Under this provision, claimants are expected to be capable of, available for, and actively seeking full-time work.¹

Consolidated Finding # 2 provides that the claimant is capable of working without restrictions. As for the claimant's availability for full-time work, the review examiner originally found that since the claimant does not have a history of working full-time and going to school full-time, she was not available for full-time work. 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), this is not the only way that a person who is in school can meet the burden. As we have previously held, attending school full-time does not result in a *per se* disqualification or in a presumption that a person cannot be available for full-time work. *See* BR-106530 (June, 2008).² Each case must be considered individually.

After remand, the consolidated findings establish that the claimant was available for work anytime on weekends and Mondays, as well as during the evening shift on Tuesdays through Fridays. Consolidated Finding # 7. She searched for employment at least four days a week in retail, customer service, telemarketing, in a hotel or nursing home. Consolidated Findings ## 8 and 9. As the review examiner noted, these are occupations that typically hire people to work in the evening, on Mondays, and on weekends. Based upon these new findings, we are satisfied that the claimant is available for and actively seeking full-time work outside of her school hours.

We, therefore, conclude as a matter of law that the claimant has met the eligibility requirements under G.L. c. 151A, § 24(b).

¹ There are exceptions for individuals participating in an approved training program under G.L. c. 151A, § 30(c), or receiving Trade Re-adjustment Assistance benefits under the Trade Act of 1974, as amended. *See* G.L. c. 151A, § 24(c), and 19 U.S.C. § 2296(d)(1)(A). There are also a limited number of circumstances under which individuals may limit their availability to part-time work. *See* 430 CMR 4.45.

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

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning April 16, 2017, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 22, 2017



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