

Because claimant was not approved for Section 30 benefits, she was expected to be available for and actively seek full-time work. She only sought part-time positions. Also, while in training, she merely looked up jobs that she would be qualified for only after she finished her medical assistant training, and she did not apply for any. She was disqualified under § 24(b).

**Board of Review
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Issue ID: 0021 7460 13

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by M. Lerner, 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 affirm.

The claimant separated from prior employment and became eligible for unemployment benefits, effective October 23, 2016. In a determination dated June 3, 2017, the DUA determined that the claimant was not eligible for benefits for the period April 9, 2017, through February 24, 2018, because she was not available for re-employment. 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 for the same period in a decision rendered on August 19, 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 more specific information about the claimant's availability for work and her job search efforts. 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 conclusion, that the claimant was not available for full-time work while attending 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. The claimant's 2016-01 unemployment claim is effective October 23, 2016.
2. As of April 13, 2017, the claimant has been attending classes Tuesdays and Thursdays from 9 a.m. to 5 p.m. and on Fridays from 9 a.m. to 1 p.m. in order to become qualified to work as a Medical Assistant.
3. The claimant has a 3-year-old child. The claimant's childcare provider is open from 7 a.m. to 5 p.m. The claimant has someone helping her pay for childcare so that she can attend school.
4. On May 6, 2017, DUA issued a Notice of Disqualification, with Issue Identification Number 0021 5883 23-01, stating that the claimant was not entitled to Section 30 training benefits because her school did not verify attendance.
5. The claimant had a court date on May 5, 2017.
6. The claimant was out of town May 24, 2017 to May 29, 2017 assisting an ill relative.
7. On June 20, 2017, the claimant had to care for [sic] daughter who was sick.
8. Due to medical issues, the claimant is limited to work which does not require her to lift more than 10 pounds.
9. The claimant reported to DUA, on or about May 8, 2017, that she was not able, available or actively seeking work.
10. The claimant reported to DUA, on or about June 6, 2017, that she was available for part time work.
11. The claimant reported to DUA, on or about April 25, 2017, that she was not able, available or actively seeking work.
12. While in school, the claimant has been looking for part time work doing the type of work for which she is in training. She goes online and looks for this type of work but she has not found any jobs listed for which she is presently qualified. For the types of positions she is looking at, the employers all want candidates who either have completed their training or have a year of experience.
13. The claimant has not filed an application for any jobs since she started school.

14. The claimant has been maintaining a work search log throughout her unemployment claim. She had been writing down on the log a record of the jobs she finds on line that match her career goals, even if she is not yet qualified for the positions. She [h]as indicat[ed] that she applied for these positions until April 7, 2017. After April 7th, she would, for nearly all jobs, indicated [sic] that she had reviewed or saved the listing. She would indicate that she attended school when she did her job search while at her training program. She indicated that she applied for one position, as a mail carrier, April 19, 2017, but it [sic] unlikely, with her lifting restrictions, that this job would be suitable.
15. The claimant completed her work search logs in the above described manner because her advisor at her career center told her she should focus her job search on the type of work and jobs she wants to get.
16. The claimant has not received any job interviews or offers since she opened her claim on October 25, 2016.
17. In order to improve the likelihood that her work search efforts might lead to interviews and job offers, the claimant updated her resume and enrolled in a training program, which she believed, will make her more attractive a candidate for the type of work she wished to pursue. This training program is not approved under Section 30 of the law.
18. The claimant had earned \$35 an hour when she worked as a train operator for the Public Transit agency. She [decreased] her acceptable wage to \$20 when she started claiming unemployment benefits. Once DUA issued the determination, on June 3, 2017, stating that the claimant was denied to [sic] benefits, under Section 24(b), for the period of April 9, 2017, through February 24, 2018, the claimant modified her wage requirements. She became willing to accept any job, regardless of pay rate, if it was for work as medical assistant or a Certified Nursing Assistant and did not interfere with her schooling.
19. The claimant included jobs on her work search log that she would be qualified to do and willing to accept, once she completes her training program. She believed this was what she was supposed to be looking for based on the instructions her advisor at the career center gave her regarding looking for work that was in the field she was seeking to enter rather [sic].
20. The claimant included on her Work Search log, for the week ending March 18, 2017, an entry that she had contact with two people at Millennium Training, at 2 Granit Ave., Dorchester. One person contacted was the head of the program and the other was the Secretary. The claimant spoke to them about the training program she wanted to attend. She also spoke to them about how the program related to the Section 30 unemployment training

benefits. She did not speak to them about actual employment with Millennium.

21. The claimant included on her Work Search log, for the week ending March 25, 2017, an entry that she had contact with two people at Millennium Training, at 2 Granit Ave., Dorchester. One person was the Financial [sic] and the other was the Secretary. The claimant spoke to the Financial Aid person about the financial aid she could expect to receive if she attended the program and to the Secretary about how the Training Program related to Section 30 Unemployment Insurance training benefits. She did not speak to them about actual employment with Millennium.
22. All entries on her work search log for Millennium Training, after March 25, 2017, reference her looking for positions relating to her training, during school hours, as part of the training program. She did not find any positions, which were suitable for her, as of the week that she noted them on her work search log. She was looking at position[s] that would be suitable for her after she finished her training.
23. The claimant was not actively seeking work in her usual occupation, or any other occupation for which she was reasonably fitted, for the period of November 27, 2016 through June 3, 2017, as she was unable to find any positions which met her wage requirement of \$20 an hour in most of the these weeks. The positions that she did find, which met her wage requirements, were not suitable, as she did not have the required training or experience. She applied for one position, as a mail carrier, which was likely unsuitable given that she could not lift more than 10 pounds.
24. The claimant was not actively seeking work in her usual occupation, or any other occupation for which she was reasonably fitted, during the period of April 9, 2017 through the date of the remand hearing November 2, 2017. She was [sic] actively seeking work, for which she expected to be reasonably fitted, after she completed her training on or about February 24, 2018.
25. On June 3, 2017, DUA issued a Notice of Disqualification with Issue Identification Number 0021 7460 13-01 stating that the claimant was disqualified from receiving benefits under Section 24(b) of the law for the period of April 9, 2017 through February 24, 2018.

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 except as follows. We reject the portions of Consolidated Findings ## 23 and 24, which state that the claimant was or was not actively seeking work, as this is a legal conclusion and not a finding

of fact. *See Dir. of Division of Employment Security v. Fingerman*, 378 Mass. 461, 463–464 (1979) (“Application of law to fact has long been a matter entrusted to the informed judgment of the board of review.”). In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. As discussed more fully below, we also believe the review examiner reached the correct legal conclusion that the claimant is ineligible for benefits.

In the instant case, the review examiner denied benefits pursuant to 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 order to qualify for benefits pursuant to this statutory provision, a claimant must show that she is able, available for, and actively seeking full-time work. We do not see anything in the record, including the 10-pound lifting restriction, which rendered the claimant incapable of full-time employment. *See Consolidated Finding #8*. The question before us is whether the claimant has satisfied the requirements to be available for and actively seeking a full-time job.

The review examiner disqualified the claimant for the week beginning April 9, 2017, because this is the week that the claimant began participating in her full-time medical assistant training program, which runs through February 24, 2018. *See Consolidated Findings ## 2 and 24*. Once she began training, the claimant only looked for part-time work outside of school hours. *Consolidated Finding # 12*. The DUA has promulgated regulations to permit claimants to restrict their availability to part-time employment under certain circumstances, but attendance at school is not one of them. *See 430 CMR 4.45*.

We understand that the claimant sought the DUA’s approval for her training program so that she would qualify for an extension of up to 26 weeks of benefits as well as a waiver of both the work search and availability requirements while she completed the training. *See G.L. c. 151A, §§ 24(c), 30(c)* (Section 30 benefits), and *430 CMR 9.01*. However, the claimant’s application for Section 30 benefits was denied. *See Issue ID # 0021 5883 23*. Because her medical assistant training program was not approved for Section 30 benefits, the claimant remained obligated to be available for full-time work while she was in school.

The claimant’s work search log, Exhibit # 17, shows three entries each week. We remanded to obtain more information about these entries. The DUA expects a claimant “to follow a course of action which is reasonably designed to result in prompt re-employment in suitable work.” *DUA Service Representative Handbook, § 1005(C)*. Here, the consolidated findings show that beginning the week of April 9, 2017, when the claimant started school, she merely looked up and wrote down potential jobs that matched her career goals, but for which she was not yet qualified. *Consolidated Finding # 12*. Moreover, she did not apply for any jobs. *Consolidated Finding # 13*. Since she did not apply for any jobs, her job search efforts could not possibly result in prompt re-employment. These efforts did not amount to an active work search within the meaning of G.L. c. 151A, § 24(b).

We, therefore, conclude as a matter of law that the claimant has failed to show that she was available for and actively seeking full-time employment, as required under G.L. c. 151A, § 24(b).

The review examiner's decision is affirmed. The claimant is denied benefits for the week beginning April 9, 2017, through the expiration of her 2016-01 claim, which expires on October 21, 2017.

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 12, 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