

Board of Review
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Issue ID: 0022 0455 55

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Leslie Branco, a review examiner of the Department of Unemployment Assistance (DUA), to deny the claimant benefits for one week. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On July 6, 2017, the agency initially determined that the claimant was not entitled to unemployment benefits, under G.L. c. 151A, § 24(b), for the week ending June 10, 2016. The claimant appealed and participated in the hearing. In a decision rendered on August 5, 2017, the review examiner affirmed the agency's initial determination, concluding that the claimant was not available for work during the week in question, and thus was ineligible for benefits for the week ending June 10, 2016, under G.L. c. 151A, § 24(b). The Board accepts the claimant's application for review.

Ruling of the Board

After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we conclude that the review examiner's decision to disqualify the claimant, pursuant to G.L. c. 151A, § 24(b), is based on substantial evidence and is free from any error of law affecting substantive rights.

Under G.L. c. 151A, § 24(b), a claimant must be capable of, available for, and actively seeking work for each week in which benefits are claimed. The burden is on the claimant to show that she meets all three of these requirements each week. The claimant must specifically demonstrate that she is available for *full-time* work, with few exceptions not relevant here.

The review examiner's legal analysis states that the claimant was not available for work during the week in question because she "has not established a prior history of working full-time while attending school full-time." While a past history of simultaneously working full-time and attending full-time school may be considered as evidence of a claimant's capacity to do so during the present time, this is not the crux of the legal inquiry and this fact alone does not in itself disqualify the claimant.

The question before us is whether, outside of the hours of her training during the week, the claimant was available for full-time work in a profession in which she was seeking employment and for which she was reasonably suited. The claimant testified that she left for her training program at

approximately 7:30 a.m. and did not arrive back home until approximately 5:30 p.m. The program met from Monday through Thursday, for four of the five days of the typical workweek. The claimant also testified that she is seeking a job in the human resources field, which is the same field that she was previously employed in. Not only is it likely that human resources positions operate during typical business hours, but the claimant's appeal to the Board of Review confirms that "in [her] profession most job functions are during the day." Therefore, during the week in question, the claimant has not demonstrated that there was full-time work available outside of the hours the claimant was attending her training program.

We, therefore, conclude as a matter of law that the claimant was not available for work during the week in question. The review examiner's decision is, therefore, affirmed. Pursuant to G.L. c. 151A, § 24(b), the claimant is denied benefits for the week ending June 10, 2017.

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 28, 2017



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Chairman



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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.

JRK/rh