

Where the review examiner accepted as credible the claimant's testimony that she would accept full-time employment were it offered and would modify her full-time school schedule to accommodate full-time employment, the claimant established that she was available for full-time employment pursuant to G.L. c. 151A, § 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: 0022 4136 82

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by J. Gangi, a review examiner of the Department of Unemployment Assistance (DUA), to deny three weeks of unemployment benefits while the claimant attended a training program. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant separated from employment and filed a claim for unemployment benefits with the DUA, which was approved. After the claimant enrolled in a training program, the DUA issued a determination on August 8, 2017, finding the claimant ineligible for benefits for three weeks while she participated in her training program. 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, in a decision rendered on September 28, 2016. We accepted the claimant's application for review.

The three weeks of benefits were denied after the review examiner determined that the claimant did not establish that she had a history of working full-time while simultaneously attending school full-time, and, thus, was disqualified for those three weeks pursuant to 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 back to the review examiner for subsidiary findings. Thereafter, the review examiner issued her consolidated findings of fact and a credibility assessment. 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 ineligible for three weeks of benefits because she did not establish a history of having attended school full-time while simultaneously working full-time 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 assessment are set forth below in their entirety:

1. The claimant earned an Associates' Degree in 1990.
2. The claimant earned a Bachelors' Degree in Business Administration, with a concentration in Accounting, in 2001.
3. The claimant worked full-time while she earned credits to complete the above Bachelors' Degree program. She took two or three classes per semester, and occasional summer classes.
4. The claimant worked as a Senior Account Analyst and then as a Project Manager between 2000 and 2010 for an investment and financial consulting company.
5. The claimant worked as an Operations Consultant/Project Manager, then as an ERISA Client Billing Consultant, then as a Client Change Project Manager, then as a Segment Lead, then as a Product Development Client Change Project Manager for another investment and financial consulting company from 2011 to May 2017.
6. The claimant filed an unemployment insurance claim and obtained an effective date of her claim of 5/7/17.
7. The claimant attended a Lean Six Sigma Green Belt Training and Certification Course between 7/10/17 and 8/4/17, Monday through Friday, from 8am to 4pm.
8. The claimant was capable of performing work between 7/9/17 and 7/29/17.
9. The claimant would have put the above training and certification course on hold if she was offered full-time work between 7/9/17 and 7/29/17.
10. The claimant searched for Project Manager positions three days per week during the three weeks beginning 7/9/17 to 7/29/17.

Credibility Assessment:

The claimant provided credible testimony regarding whether she was able to work, available to work, and searched for work between 7/9/17 and 7/29/17, which includes her testimony regarding whether she would have put the above training on hold had she been offered full-time employment. Her testimony was detailed and logical, and she provided supplemental documentation to show past work experience.

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 and credibility assessment are supported by substantial and credible evidence; and (2) whether the review examiner's ultimate conclusion is free from error of law. Upon such review, the Board adopts the review examiner's consolidated findings of fact and credibility assessment and deems them to be supported by substantial and credible evidence. However, as discussed more fully below, we reject the review examiner's original legal conclusion that the claimant is ineligible for these three weeks of unemployment benefits because she did not establish that she has a past history of working full-time while simultaneously attending school full-time.

The review examiner's analysis considered the claimant's eligibility for unemployment benefits from July 9, 2017, through July 29, 2017, 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

Under G.L. c. 151A, § 24(b), the claimant has the burden to prove that she meets each requirement of this statute.¹ The review examiner initially found the claimant was physically capable of performing work during the period at issue. The review examiner also found that the claimant searched for suitable work three days per week during the period at issue. The review examiner properly concluded the claimant satisfied the capability and work search requirements of G.L. c. 151A, § 24(b), during the period at issue.

Regarding the claimant's availability for full-time employment, the review examiner initially concluded that the claimant did not meet the availability requirement of G.L. c. 151A, § 24(b), because she failed to establish that she had a history of having worked full-time while simultaneously attending school full-time.

The review examiner's rationale for denying the three weeks of benefits at issue here relied on the underlying determination in this case, which cited the claimant's lack of prior history of working full-time while simultaneously attending school full-time as the basis for this disqualification. *See* Hearings Exhibit # 6. 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

¹ A claimant who attends a DUA-approved training program pursuant to G.L. c. 151A, § 30(c), may be entitled to up to 26 additional weeks of benefits, as well as a waiver of the availability and work search requirements of G.L. c. 151A, § 24(b). *See* 430 CMR 9.07(2). Here, the claimant's application for training benefits was filed with the DUA on August 2, 2017, and was subsequently approved through the end of her program on August 4, 2017. *See* DUA Issue ID # 0022 6728 69. Because the claimant did not submit her application until August 2, despite having begun her program on July 10, 2017, she was still required to satisfy all of the requirements of G.L. c. 151A, § 24(b), for the period prior to the submission of her application.

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.

After remand, in Consolidated Finding # 9, the review examiner credited the claimant's testimony and found:

The claimant would have put [her] training and certification course on hold if she was offered full-time work between 7/9/17 and 7/29/17.

This finding is dispositive for the issue here. The review examiner accepted as credible the claimant's testimony that she would have modified her training to accept employment if she were offered a job. We, therefore, conclude as a matter of law that the claimant was capable of, available for, and actively seeking full-time employment between July 9, 2017, and July 29, 2017.

The review examiner's decision is reversed. The claimant is entitled to receive benefits from the week beginning July 9, 2017, through the week ending July 29, 2017, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - January 29, 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.

JPC/rh

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