

Claimant is entitled to benefits because she is available for full-time work while enrolled in school part-time.

**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
Michael J. Albano
Member**

Issue ID: 0024 0569 65

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to deny unemployment benefits during several weeks of her claim. We review, pursuant to our authority under G.L. c. 151A, § 4, and we affirm in part and reverse in part.

The claimant filed a claim for unemployment benefits with an effective date of December 17, 2017. On February 27, 2018, the DUA issued a determination stating that the claimant was ineligible for benefits under G.L. c. 151A, § 24(b), as of December 17, 2017, because she had not demonstrated a prior history of both studying and working full-time and, therefore, was not available for work. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by the claimant, the review examiner rendered a decision on May 11, 2018, stating that the claimant met the requirements of G.L. c. 151A, § 24(b), and was, therefore, entitled to benefits between December 17, 2017, and January 20, 2018, and beginning on March 25, 2018. The decision further stated that the claimant was not entitled to benefits between January 21, 2018, and March 24, 2018, because she did not meet the availability requirements of G.L. c. 151A, § 24(b), during this period. We accepted the claimant's application for review.

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 additional testimony and other evidence pertaining to the claimant's availability for work while enrolled in school. The claimant attended the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue on appeal is whether the review examiner's decision, which concluded that the claimant did not meet the availability requirement of G.L. c. 151A, § 24(b), between January 21, 2018 and March 24, 2018, is supported by substantial and credible evidence and is free from error of law, where, after remand, the review examiner found that the claimant was available for work most of the day during three days per week and all day during another three days per week.

Findings of Fact

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

1. The claimant filed a claim for unemployment benefits with an effective date of December 17, 2017.
2. The claimant worked full-time when she was laid off by her former employer in December 2017.
3. The claimant began attending school part time in September 2017, while she was employed full time by her former employer.
4. From the period beginning December 17, 2017, the claimant searched for work 4 to 5 days per week by visiting online job sites and submitting resumes to potential employers.
5. As of December 17, 2017, the claimant was available for full-time work.
6. The claimant began her 2018 spring semester classes on January 23, 2018.
7. As of December 17, 2017, the claimant was physically and mentally capable of working.
8. Between December 17, 2017 and January 23, 2018, the claimant was available to work a full time schedule Sunday to Saturday.
9. As of January 23, 2018, the claimant was taking 11 credits. The claimant's school schedule was 9:30am to 10:45pm, Monday and Wednesday; 9:30am to 1:45pm, Tuesday; 9:45am to 2:00pm, 5:00pm to 7:40pm, Thursday.
10. As of March 26, 2018, the claimant reduced her school schedule from 11 credits to 9 credits. The claimant withdrew from her class held on Thursdays from 5pm to 7:40 pm, because the class had a 50-hour internship requirement that would have interfered with the claimant's availability to work full-time.
11. The claimant was not doing a 50-hour unpaid internship at any point during the 2018 spring semester.
12. Between January 23, 2018 and March 26, 2018, the claimant was available to work after 12:00pm on Mondays and Wednesdays, after 2:00pm on Tuesdays, an overnight shift on Thursdays, and any schedule on Fridays, Saturdays and Sundays.
13. From at least March 26, 2018, the claimant was able and available for full-time work.

14. As of March 26, 2018, the claimant was available to work after 12:00pm on Mondays and Wednesdays, after 2:00pm on Tuesdays, after 2:00pm on Thursdays, and any schedule on Fridays, Saturdays and Sundays.
15. From at least March 26, 2018, the claimant searched for work about 5 days each week by visiting online job sites and submitting applications to potential employers.

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 portion of Finding of Fact # 9 that states the claimant was in school between 9:30 a.m. and 10:45 p.m. on Mondays and Wednesdays, as this appears to be a typo, given that the claimant testified her schedule was 9:30 a.m. to 10:45 a.m. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as explained more fully below, we conclude that the claimant was eligible for benefits during the period at issue.

Since the review examiner determined that the claimant is not available for full-time work, this case is governed by 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 her original decision, the review examiner concluded that the claimant did not meet the availability requirement of G.L. c. 151A, § 24(b), between January 21, 2018, and March 24, 2018, because she was in school full-time and did not have a history of working and going to school full-time.¹ While such a history is a consideration, the availability of a claimant who is enrolled in school must be looked at on a case-by-case basis.

Here, after remand, the review examiner found that the claimant was available to work full-time between December 17, 2017, and January 22, 2018, as she was available for work seven days per week. The review examiner also found that, between January 23, 2018, and March 26, 2018, the claimant was available for work Mondays and Wednesdays after 12:00 p.m., Tuesdays after 2:00 p.m., during an overnight shift on Thursdays, and any time between Friday and Sunday. Finally, the review examiner found that, after March 26, 2018, the claimant was available for work Mondays and Wednesdays after 12:00 p.m., Tuesdays and Thursdays after 2:00 p.m., and any time between Friday and Sunday. These consolidated findings establish that, even in her period of least availability, the claimant was available for work most of the day three days per week and

¹ We note that, since the claimant was not enrolled in courses totaling at least 12 credits, she is not generally considered to be in school full-time during the period at issue. See DUA Service Representative Handbook, § 1033(A) and (B). However, she must still demonstrate her availability for full-time work because she is enrolled in school part-time.

all day another three days per week. In light of this, we conclude that the claimant was available for full-time work as of December 17, 2017.

We note that the claimant's ability to work and work-search efforts are not at issue in this decision, as the totality of the record indicates that she has met these requirements within the meaning of G.L. c. 151A, § 24(b).

We affirm the part of the review examiner's decision that awarded benefits to the claimant between December 17, 2017, and January 20, 2018, and beginning on March 25, 2018. We reverse the part of the decision that denied benefits to the claimant between January 21, 2018 and March 24, 2018. The claimant is entitled to benefits as of December 17, 2017, and in subsequent weeks, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 27, 2018



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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.

SVL/rh