

A claimant who certified to the agency that she was not available to work or searching for work because she was in school was not eligible for benefits under G.L. c. 151A, § 24(b). However, when she began to search for work and looked into changing her school schedule after she was informed that she was not approved for training benefits pursuant to G.L. c. 151A, § 30(c), the claimant is not disqualified under G.L. c. 151A, § 24(b).

**Board of Review
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Issue ID: 0024 1890 11

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 for the period from August 6, 2017 through March 5, 2018.¹ We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm in part and reverse in part.

After filing a claim for unemployment benefits, the claimant began to attend a full-time training program. She submitted an application to the DUA's Training Opportunities Program, which was denied. The agency also issued a determination pursuant to G.L. c. 151A, § 24(b), denying her benefits for the period of time she was in school.² The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by the claimant, the review examiner modified the agency's initial determination, denying benefits from August 6, 2017 through March 5, 2018.

Benefits were denied for that period of time after the review examiner determined that the claimant was not available for full-time work or actively seeking work and, thus, 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 accepted the claimant's application for review and remanded the case to the review examiner to take additional evidence regarding the claimant's availability for work and work search efforts. 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 before the Board is whether the review examiner's decision, which concluded that the claimant is not eligible to receive unemployment benefits from August 6, 2017 through March 5,

¹ March 5, 2018 is a Monday. By disqualifying the claimant through March 5, 2018, the review examiner effectively disqualified her for the entire week of March 4, 2018, through March 10, 2018.

² The determination at issue here disqualified the claimant from August 6, 2017 through May 19, 2018.

2018, is supported by substantial and credible evidence and is free from error of law, where the claimant initially told the agency in late 2017 that she was not searching for work due to her attendance at school and she offered evidence of her work search on and after March 6, 2018.

Findings of Fact

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

1. On 12/13/2017, the claimant submitted to the Department of Unemployment Assistance (DUA) a Training Opportunities Program (TOP) Application.
2. According to the application the claimant was in attendance at Salter College. The claimant was attending classes from 8:30 a.m. to 2:30 p.m. The application section filled out by the school indicates that the claimant began classes on 8/7/2017, and that she was a full-time student.
3. On the Continued Claims Summary Forms for the week ending 12/30/2017 through 1/20/2018, the claimant indicated that she was not available to work, (because the form instructed her to state "No" if she was in training/school).
4. On the continued Claims Summary Forms for the week ending 12/30/2017 through 1/20/2018, the claimant indicated that she did not look for work.
5. On 1/9/2018, the DUA generated a questionnaire to the claimant and the claimant gave the following:

Were you **able** to work full time during the week beginning 12/24/2017? NO
If No, please explain why you were not **able** to work full time.

Were you **able** to work the same number of hours that you worked in your previous employment? NO

If No, please explain why you were not **able** to work the same number of hours:

In school/training

Are you now **able** to work full time? NO

If No, please explain why you are not **able** to work full time:

In school/training Monday-Friday 8:30am-2:30pm

Were you **available** to work full time during the week beginning 12/31/2017?

NO

If No, please explain why you were not **available** to work full time:

In school/training

Were you **available** to work the same number of hours that you worked in your previous employment? NO

If No, please explain why you were not **available** to work the same number of hours:

In school/training

Are you now **available** to work full time? NO

If No, please explain why are you not **available** to work full time:

In school/training

If No, is your availability to work limited to specific days or hours each week?

YES

If Yes, please explain why your **availability** is limited and which days or hours:

In school/training

Were you **actively seeking** full time work during the week beginning 12/31/2017? NO

If No, please explain why you were not **actively seeking** full-time work:

In school/training

Are you now **actively seeking** full time work? NO

If No, please explain why you are not **actively seeking** full time work:

In school/training

What schedule of hours did you work on your most recent job?

7am-3:30pm Monday-Friday

6. On 1/20/2018, the DUA generated a Notice of Disqualification to the claimant which stated in part:

Reasoning and Findings

For a fixed period of time, you are in attendance at a full-time educational program and have not demonstrated a prior history of both studying and work full-time. Therefore, you do not meet the availability requirements of the Law.

Applicable Section of Law

You are not entitled to receive benefits for the period beginning 8/6/2017 and through 5/19/2018.

Effect of this Determination

You are not entitled to receive benefits for the period beginning 8/6/2017 and through 5/19/2018.

7. On 2/9/18, the claimant received notification from the DUA that she had been approved under the provisions of Section 30 of the law.
8. On 3/6/2018, the claimant was told by the DUA that she should disregard the approval letter for Section 30, and she was not approved to go to school and as

of that point she began to look for full time work and she has been told by the school that they would be willing to rearrange her classes to evening classes to accommodate a full time job.

9. As of 3/6/2018, after the claimant was informed that she was not approved, she changed her classes at Salter College to part-time classes, she attends three days per week from 8:30am to 11:30am. The school has informed the claimant that if she needs to change her hours to accept a job, the hours can be changed to 5:30 p.m. to 9:30 p.m. (1(a) b(i))
10. On the Continued Claims Summary for the week of Sunday 3/4/2018 through Saturday, 3/10/2018, the claimant indicated that she was able to work, available for work and that she looked for work. The claimant indicated that she searched for work on 3/9/2018 with [Employer A], an employment agency, she contacted [Name A], by telephone, # [phone number A], for a bookkeeping position, there was no work. On 3/7/2018, the claimant went to a career fair at [Employer B], she spoke with HR, in person, in [Town A], for work as a nursing assistant, a follow-up was requested. On 3/8/2018, the claimant visited the website ([website A]) for the employer [Employer C], for the job of data analyst, there was no response. On 3/5/2018, the claimant went in person to the employer [Employer D], she spoke with [Name B], the position was a home care assistant, a follow-up was requested. (2)
11. On the Continue Claims Summary for the week of Sunday, 3/11/2018 through Saturday, 3/17/2018, the claimant indicated that she was able to work, available for work and that she looked for work. The claimant indicated that she searched for work on 3/13/2018 with an employment agency, [Agency A], she contacted the HR on their website ([website B]) for the job of medical assistant, a follow-up was requested. On 3/16/2018, the claimant searched for work with an employment agency [Agency B], she went in person and spoke with HR, the job was medical assistant, a follow-up was requested. On 3/15/2018, the claimant went to an employer [Employer E], she spoke with HR and a follow up was requested. (2)
12. On the Continued Claims Summary for the week of Sunday 3/18/2018 through Saturday, 3/24/2018, the claimant indicated that she was able to work, available for work and that she looked for work. The claimant indicated that she searched for work on 3/19/2018 with the employer [Employer F], she went to their website ([website C]) for the job of administrative assistant, a follow-up was requested. On 3/21/2018, the claimant contacted [Employer G] by mail, she applied for the job of medical assistant, she received no response. On 3/23/18, the claimant attended a career fair at [Employer H], she spoke with [Name C] about the position of medical assistant, a follow-up was requested. (2)
13. On the Continued Claims Summary for the week of Sunday, 4/1/2018 through Saturday, 4/7/2018, the claimant indicated that she was able to work, available

for work and that she looked for work on three days of that week. She indicated that she completed job applications in person or online with employers and she used employment resources available at a Career Center. (2)

14. On the Continued Claims Summary for the week of Sunday, 4/8/2018 through Saturday, 4/14/2018, the claimant indicated that she was able to work, available to work and that she looked for work of four days of that week. She indicated that sent job application to employers, used online job matching systems including the Career Center internet-based system. (2)
15. On the Continued Claims Summary for the week of Sunday, 4/15/2018 through Saturday, 4/21/2018, the claimant indicated that she was able to work, available to work and that she looked for work on four days of that week. She indicated that she mailed job applications/or resumes as instructed in a public job notice, and she made in-person visits with employers. (2)
16. On the Continued Claims Summary for the week of Sunday, 4/22/2018 through Saturday, 4/28/2018, the claimant indicated that she was able to work, available to work and that she looked work on four days of that week. The claimant obtained or followed up on job referrals at the Career Center, and she attended job search seminars, career networking meetings, job fairs or employment-related workshops. (2)
17. On the Continued Claims Summary for the week of Sunday, 4/29/2018 through Saturday, 5/5/2018, the claimant indicated that she was able to work, available to work, and that she looked for work four days of that week. She indicated that she reviewed job listing on the internet, newspapers or professional journals, and contacted professional associations. (2)
18. On the continued Claims Summary for the week of Sunday, 5/6/2018 through Saturday, 5/12/2018, the claimant indicated that [she] was able to work, available to work, and that she looked for work on four days of that week. She indicated that she used online job matching systems including the Career Center internet-based system to submit applications/resumes, search for matches or request referrals, and/or apply for jobs. (2)
19. According to the computer records, the claimant did not sign for benefits after the week ending 5/19/18.

[CREDIBILITY ASSESSMENT:]

Although the claimant gave credible testimony to establish why she was not looking for full-time work prior to 3/6/18, because the Continued Claims Summary instructed her to do so, the testimony and evidence available to the examiner failed to establish that she was looking for work until she was informed that she was not approved under Section 30 of the law, and for this reason the

claimant's testimony that she was in fact looking for work prior to 3/6/18 is not credible. The evidence that the examiner relied upon to make the credible assessment was the additional questionnaire generated by the DUA to the claimant for the period beginning 12/31/2017. The evidence, specifically the claimant's answers on the Continued Claims Summary and her work search, establishes that the claimant was looking for full time work as of 3/6/18.

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. We further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented. As discussed more fully below, we conclude that the review examiner's initial decision to deny benefits from August 6, 2017 through March 3, 2018, is free from error of law. She is eligible for benefits as of March 4, 2017.

In December of 2017, the claimant submitted a Training Opportunities Program (TOP) Application to the DUA. This application signaled to the DUA that the claimant was attending school and that her eligibility for benefits may be in question. G.L. c. 151A, § 24(b), 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

A claimant's attendance at school potentially implicates the availability and work search prongs of the above-cited statute.³ If the claimant is attending school full-time, as the claimant did here, there is a question as to whether the claimant could also be available for full-time work. Moreover, where a person is in school full-time, there is a question as to whether the person would be searching for a new job that she is willing to immediately accept.

As noted in the review examiner's credibility assessment, the claimant testified that she was available for full-time work and searching for full-time work prior to March of 2018. She testified that she only gave the answers she did to the DUA about not being available for work and actively seeking work, because she was instructed to do so by the agency's forms (that is, answer that she was not available to work if she was in school full-time). The review examiner, however, did not find substantial evidence in the record to conclude that, prior to March 6, 2018, the claimant was actively searching for work and was making herself available for full-time work.

These conclusions are supported by a full view of the record. Based on the claimant's testimony, the review examiner found that the claimant could change her school schedule to night classes,

³ There is no evidence in the record that any physical ailment prevented the claimant from being capable of working.

making her available for full-time work during the day. *See* Consolidated Finding of Fact # 9. However, the review examiner also found that this full-time availability coincided with the claimant being informed by the DUA on March 6, 2018, that she was not approved under the Training Opportunities Program.⁴ *See* Consolidated Finding of Fact # 8. In light of her responses to the agency's questionnaire in December of 2017 that she was in school/training from Monday through Friday from 8:30 a.m. to 2:30 p.m., and that she had previously worked a very similar schedule at her most recent job, the review examiner concluded, as the agency initially did, that the claimant was not searching for work, available for full-time work, and attached to the labor market in late 2017 and early 2018. Indeed, it seems relatively clear that the claimant was counting on a TOP approval for her course, which would have relieved her of the need to be available for work and search for work. When she was finally told in March of 2018 that she was not approved under TOP, she made efforts to fulfill the requirements of G.L. c. 151A, § 24(b).

We see nothing unreasonable with the review examiner's view of the evidence before her, given the timeline of events, the testimony of the claimant, the responses she gave to the agency, and her documented work search efforts beginning in March of 2016. We, therefore, conclude as a matter of law that the review examiner's initial decision to deny benefits beginning August 6, 2017, is free from error of law. Because the claimant was actively seeking work for the majority of the week beginning March 4, 2018, and because she conceivably could have worked a full-time schedule that week after she found out about the TOP denial, we conclude that the claimant should only be disqualified through March 3, 2018. *See* Consolidated Finding of Fact # 10.

⁴ Approval would have meant that the availability and work search requirements are waived for the period of time that the claimant is in the approved training course. Because the claimant was not approved, she is responsible for being available for full-time work and actively searching for work during the period of time she was attending school.

The review examiner's decision is affirmed in part and reversed in part. The claimant is denied benefits for period August 6, 2017 through March 3, 2018. The claimant is entitled to receive benefits beginning March 4, 2018, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - June 29, 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.

SF/rh