

The decision to deny benefits indefinitely under G.L. c. 151A, § 24(b) is reversed. The claimant is entitled to receive benefits commencing March 29, 2018, the date of the claimant's notice of approval to participate in a training program under G.L. c. 151A, § 30(c).

**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 7035 83

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. We review, pursuant to our authority under G.L. c. 151A, § 41, and we reverse in part and affirm in part.

The claimant separated from employment and filed a claim for unemployment benefits with the DUA, with an effective date of February 11, 2018, which was denied in a determination issued on March 7, 2018. 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 in a decision rendered on April 20, 2018. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not available to work full-time hours, and thus was disqualified under G.L. c. 151A, § 24(b). Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant is disqualified under G.L. c. 151A, § 24(b), for an indefinite period beginning February 11, 2018, is supported by substantial and credible evidence and is free from error of law, where the record shows that she was approved for benefits under G.L. c. 151A, § 30(c), beginning on March 29, 2018.

Findings of Fact

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

1. In the fall of 2016, the claimant began an associate's degree program in communication at a community college. She expected to complete the program in December, 2018.

2. In 2016, the claimant worked as a waitress. She initially worked 30–35 hours per week, which was considered full-time. At the beginning of 2017, she reduced her hours to 20–25 per week, to allow more time for her school work. After being discharged from her waitressing job, the claimant opened an unemployment claim having an effective date of February 11, 2018.
3. During the spring 2018 semester (January through May), the claimant was attending school full-time. She was taking 12 credits and was busy at school from 7 a.m. to 1 p.m. on weekdays.
4. The claimant opened an unemployment claim having an effective date of February 11, 2018.
5. Since opening her claim, she has been looking for a part-time job as a waitress or as an intern in communication.
6. The claimant is available to work 20–25 hours per week. She can work from 4 p.m. to 11 p.m. on Thursday, Friday, Saturday and/or Sunday.
7. She is only available to work part-time because she is concentrating on getting her associate's degree.
8. The claimant has no medical conditions or physical restrictions which would prevent her from working full-time.
9. Since filing for unemployment, she has looked for work 3–4 days per week. She searches internet sites, such as Indeed. She also networks with family and friends. The claimant has attended job fairs at her school. In addition, she has visited restaurants to inquire about the potential for part-time work.
10. On March 7, 2018, the Department of Unemployment Assistance (DUA) issued a Notice of Disqualification to the claimant which stated she was not entitled to benefits because she was not available for work under Section 24(b) of the unemployment insurance law. The indefinite disqualification began February 11, 2018.
11. In March 2018, the claimant submitted an application to DUA to be approved for the Training Opportunities Program (TOP). Action on that application is pending.

Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the findings are supported by substantial and credible evidence; and (2) whether the review examiner's ultimate conclusion is free from error of law. After such review, the Board adopts the review examiner's findings of fact except as follows. We reject Finding of Fact # 11, which states, in error, that the claimant's application to the DUA

for the Training Opportunities Program (TOP) is still pending. The record establishes that on the date of the hearing in this case, the claimant had already been approved for the training program, and that a copy of the approval notice was contained in the record as Exhibit # 9. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as outlined below, we do not agree with the review examiner's legal conclusion that the claimant is ineligible for benefits during the weeks after she obtained approval for training benefits under G.L. c. 151A, § 30(c).

The claimant was disqualified from receiving benefits under 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

An exception to this general requirement to be able, available, and actively seeking work is made for individuals who have been approved for an extension of benefits under G.L. c. 151A, § 30(c), while they participate in an approved training program (Section 30 benefits). *See* G.L. c. 151A, § 24(c). In the present case, the claimant became eligible for Section 30 benefits. *See* Exhibit #9, Notice of Approval under G.L. c. 151A, § 30, dated March 29, 2018.

The claimant began attending her training program at some time prior to filing her claim for unemployment benefits in February, 2018, with an effective date of February 11, 2018. She applied for Section 30 benefits in March, 2018. DUA regulations state that when a claimant begins her training program before final approval for Section 30 benefits, she is not eligible to receive benefits until the date her application for Section 30 benefits is approved. 430 CMR 9.06(2)(b). In this case, the claimant was approved on March 29, 2018. Despite this approval, the review examiner denied the claimant benefits indefinitely.

We, therefore, conclude as a matter of law that the review examiner's initial decision to deny benefits indefinitely, pursuant to G.L. c. 151A, § 24(b), is not supported by substantial and credible evidence or free from error of law, where the claimant was approved to participate in approved training under G.L. c. 151A, § 30(c), and the claimant's obligation to be able, available, and actively seeking work was waived.

The portion of the review examiner's decision that disqualified the claimant from receiving benefits beginning the week ending February 17, 2018 is affirmed. The portion of the review examiner's decision that disqualified the claimant indefinitely is reversed. The claimant is entitled to receive benefits for the week ending March 31, 2018, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 31, 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.

SPE/rh