

**While participating in his full-time training program, which he attends several evenings a week and on Saturdays, the claimant is capable of, available for, and actively searching for suitable full-time work. Thus, he is eligible for benefits under G.L. c. 151A, § 24(b).**

**Board of Review  
19 Staniford St., 4<sup>th</sup> 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: 0027 7346 95**

## **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 reverse.

The claimant separated from employment and filed a claim for unemployment benefits with the DUA, effective June 17, 2018, which was approved. Subsequently, in a determination issued on November 16, 2018, the claimant was disqualified from receiving benefits from October 14, 2018, until June 29, 2019. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, the review examiner affirmed the agency's initial determination to deny benefits, but changed the disqualification period to October 21, 2018, through June 30, 2019, in a decision rendered on December 15, 2018. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not available for full-time work while participating in a training program and, thus, he 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 remanded the case to the review examiner to obtain further evidence about the claimant's employment history as well as his availability for, and efforts to obtain, full-time work while in school. The claimant attended the remand hearing. Thereafter, the review examiner issued his 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 original decision, which concluded that the claimant was not available for full-time work while attending a full-time training program, is supported by substantial and credible evidence and is free from error of law, where the record after remand shows that the claimant has been available for full-time work outside of his school hours.

### **Findings of Fact**

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

1. The claimant filed an unemployment claim which was established with an effective date of 6/17/2018.
2. On 10/29/2018, the claimant submitted, "Training Opportunities Program Application" to attend a Machinist Training Program.
3. The training course is offered by ECCO/ETeam on [Address A].
4. The training program is full-time for 20 hours a week.
5. The claimant attends the training program 5:30 p.m. to 9:00 p.m. Tuesday, Wednesday and Thursday and 7:00 a.m. to 3:00 p.m. on Saturday.
6. The claimant began attending on 10/20/2018 and anticipates completing the course on 6/29/2019.
7. The claimant is still attending training full-time currently and still anticipates completing the course on 6/29/2019 as expected.
8. The ECCO/ETeam Machinist Training Program is not a registered program through the Massachusetts One Stop Employment System.
9. The claimant has 25 years of experience as a restaurant general manager, window installer and tree remover. His most recent employment was the restaurant general manager position.
10. Since 10/20/2018, the claimant has been physically capable of full-time work in his usual occupations.
11. The claimant does not have any physical limitations and has been capable of working since 10/20/2018.
12. In 2008, the claimant attended a full-time E-Team Training machinist training program through the same training facility while working as a full-time landscaper daily from 7:00 a.m. to 4:00 p.m.
13. The training program was cancelled in 2008 and the claimant did not earn a diploma or certificate.
14. The claimant has been available for full-time employment while attending the training program he began on 10/20/2018.
15. The claimant is available for work Monday through Friday from 7:00 a.m. to 3 p.m. and available for [Company A] driving after 9:00 p.m. at night.

16. Since filing his unemployment claim on 6/19/2018, the claimant has been offered one position which was as a part-time Assistant Manager at a restaurant for \$18 an hour.
17. The claimant declined the offer because the pay of \$18 [per hour] was not enough.
18. If the claimant was offered full-time employment that conflicted with his school schedule, the claimant could adjust his school schedule to accommodate any potential new employment.
19. The claimant would adjust his school schedule to accommodate any potential new employment if offered full-time employment that conflicted with his school schedule.
20. The claimant would leave without completing his training to accept to full-time employment.
21. The claimant searches for employment using online accounts and networking with friends in the restaurant business.
22. The claimant spends 5 days a week searching for work.
23. The claimant is seeking work as a machinist or as a manager in the restaurant industry.
24. The claimant is seeking work within his normal occupations of as [sic] a machinist or restaurant manager for which he is qualified.
25. Machinist work or restaurant management work is available during the times when the claimant is not in school.
26. The claimant has had one job interview for a restaurant manager position. It did not lead to any additional interviews after the claimant declined the offer.
27. The claimant has keep [sic] a contemporaneous work search log for each week of unemployment.

Credibility Assessment:

The claimant's testimony is accepted as credible since there was absolutely no evidence in the record to suggest otherwise.

Ruling of the Board

In accordance with our statutory obligation, we review the record and 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. However, as discussed more fully below, the consolidated findings do not support the review examiner's legal conclusion that the claimant is ineligible for benefits.

In this case, we decide the claimant's eligibility for 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 . . . .

The review examiner disqualified the claimant because he did not have a history of both working full-time and going to school full-time. 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 his burden under this section of law. 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 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)<sup>1</sup>. For this reason, we remanded to obtain additional evidence about the claimant's availability for, and efforts to find, full-time work while in his full-time training program.

After remand, the consolidated findings provide that the claimant participates in his training program during the hours of 5:30 p.m. through 9:00 p.m. Tuesday through Thursday and from 7:00 a.m. through 3:00 p.m. on Saturday. Consolidated Finding # 5. They further show that the claimant has been available for full-time work at all other times during the week, and, if a suitable full-time position were offered, he would adjust his school schedule to accept it. *See* Consolidated Findings ## 14, 15, and 18. Furthermore, he has no physical restrictions which render him incapable of working full-time. *See* Consolidated Finding # 10.

The claimant has also shown that he was actively searching for suitable jobs which were available during those non-school hours. He has extensive experience in restaurant general management, window installation, and tree removal, and is in school training to be a machinist. *See* Consolidated Findings ## 2, 6, and 9. He has been looking for work in those fields and such work is available when he is not in school.<sup>2</sup> *See* Consolidated Findings ## 23 and 25. Finally,

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<sup>1</sup> Board of Review Decision BR-106530 is an unpublished decision, available upon request. For privacy reasons, identifying information is redacted.

<sup>2</sup> Although not in the consolidated findings, the claimant also testified that, while still in his training program, he had been working from 7:00 a.m. – 3:00 p.m. as a window installer and after 9:00 p.m. as an [Company A] driver. We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. *See* Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

the findings and his work search log show that the claimant is actively searching for full-time work five days a week. *See Consolidated Findings ## 21, 22, and Remand Exhibit 6.*<sup>3</sup>

We, therefore, conclude as a matter of law that the claimant has satisfied the requirements under G.L. c. 151A, § 24(b), to be capable of, available for, and actively seeking full-time work while in his full-time training program.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning October 21, 2018, through June 30, 2019, and for subsequent weeks, if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - June 14, 2019**



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](http://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.

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<sup>3</sup> Remand Exhibit 6 is the claimant's work search log. This is also part of the unchallenged evidence in the record.