

**Claimant has demonstrated that there are no restrictions on his ability to work full-time while a full-time law student, that he has a history of full-time study and work dating back to high school, and that he has actively sought full-time work since filing his claim. He is eligible for benefits under G.L. c. 151A, § 24(b).**

**Board of Review  
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**Issue ID: 0030 0102 01**

## **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 his former employer in March, 2019. He filed a claim for unemployment benefits with the DUA, effective March 3, 2019, which was initially approved. However, in a determination dated April 24, 2019, the DUA disqualified the claimant based upon the issue in this case. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, the review examiner affirmed the agency's determination and denied benefits in a decision rendered on May 23, 2019. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not available for or actively seeking full-time work, 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 updated information about any restrictions upon the claimant's ability to work full-time while in law school and additional information about the claimant's job search and history of full-time employment while in school. The claimant participated in the remand hearing, and, 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 has not been available for or actively seeking full-time work while a full-time law student, 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 filed for unemployment benefits on 03/14/19, effective 03/03/19. Since filing his claim, the claimant has been seeking any suitable work to meet his living expenses.
2. On 08/20/18, the claimant began a full-time daytime program at [School Name A] Law School, an American Bar Association (ABA) accredited school. The claimant's anticipated graduation date is May of 2021.
3. The claimant sought a waiver of the work search and availability requirements of the Law by submitting a Section 30 training application. The claimant's request for a Section 30 waiver was denied.
4. On 04/24/19, the claimant was sent a "Corrected Notice of Disqualification". This Notice informed the claimant that he was disqualified from receiving benefits under Section 24b of the Law. The claimant requested a hearing. After the initial determination was affirmed, the claimant appealed to the Board of Review.
5. The claimant has a history of working full-time while attending school full-time while he was in High School, as an undergraduate student and now as a graduate student in law school.
6. In 2007-2008 while a full-time High School Student, the claimant was working five or six days per week from 4:00PM to 11:00PM as a Busser at the [Employer A] restaurant in the [City A]. The claimant's memory is he was paid cash "under the table" for his work at this restaurant. The claimant does not recall the amount of his wages from this employment.
7. In 2009-2011 while in school full-time at [School Name B] College, the claimant was working full-time hours evenings for [Employer B]. Later in 2011 after leaving [Employer B], the claimant also worked full-time hours as a restaurant Server at [Employer C] restaurant and then at [Employer D] restaurant. The claimant in 2011 also for a time worked full-time as a Server at [Employer E] Restaurant. The claimant did not recall his amount of weekly wages from [Employer B]. In his Server jobs, he was paid minimum wage for Servers plus gratuities.
8. In 2012 while a full-time college student at the University of [School Name C], the claimant was working full-time as a Server at [Employer F] restaurant being paid minimum wage plus gratuities.
9. In 2012-2013, while attending college full time at [School Name C], the claimant was working fulltime hours at [Employer G] as a Server being paid minimum wage plus gratuities.

10. From April 2018 through March 2019, the claimant worked full-time as a Server at [Employer H] Restaurant as a Server paid \$3.00 per hour plus gratuities (approximately \$1,500.00 per week).
11. In August 2018, the claimant began full-time law school at [School Name A] School of Law.
12. In February of 2019, the claimant was offered a full-time job at a local law firm that began in June of 2019. At the law firm, [Employer I], the claimant works forty hours per week Monday through Friday as a \$13.00 per hour Legal Intern/Paralegal. The claimant intends to remain in this full-time job throughout the remainder of his law school and indefinitely thereafter. His work schedule once school begins is unknown but is expected to be flexible fulltime hours.
13. The claimant currently, as a law student, in addition to his full-time job, is also working two part-time jobs as a paid Research Assistant for two professors at his school.
14. In May of 2019, the claimant began working zero-28 hours per week at a rate of \$14.00 per hour as a Research Assistant for Professor [Name A]. This job will end in August of 2019.
15. On 07/22/19, the claimant began working zero-28 hours per week at a rate of \$14.00 per hour as a Research Assistant for Professor [Name B]. This position will end in December of 2019.
16. The ABA at one time restricted full-time law students from working more than 20 hours per week but in 2014, the ABA eliminated this requirement. [School Name A] Law School followed the ABA changes and also no longer has any restrictions on employment while attending law school.
17. Prior to the initial hearing on 05/14/19, the claimant was unclear on work restrictions for students. The claimant was unaware that the ABA or [School Name A] Law School ever had firm work restrictions in place. The claimant first learned of past firm work restrictions at the time he received the unemployment hearing initial decision. The claimant in communications with the Dean of Academic Services at [School Name A] Law School, [Name C], learned the work restrictions no longer apply.
18. The Spring Term classes at [School Name A] Law School ended the end of April 2019. On 05/10/19, the claimant had his last exam.
19. The fall semester at [School Name A] Law begins Monday, 08/26/19 and ends on Monday, 12/02/19.

20. The claimant is healthy and has no physical problems that would prevent him from working in full-time employment.

21. On 04/24/19, the claimant was sent a “Corrected Notice of Disqualification”. This Notice informed the claimant that he was disqualified from receiving benefits under Section 24(b) of the Law. The claimant requested a hearing.

#### Credibility Assessment:

The claimant credibly testified that he was uncertain about restrictions on his employment but knew that he needed to work as much as possible to pay his living expenses. The claimant’s testimony regarding his past employment in the security and restaurant server industries while in school full-time was credible. These types of positions are flexible and would allow a full-time student to remain in school while also working full-time. The claimant’s testimony regarding his active search for work was credible and is supported by the fact that he is currently working in one full-time job and two part-time positions.

#### Ruling of the Board

In accordance with our statutory obligation, we review the record and 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. However, based upon the new consolidated findings, we disagree with the review examiner’s original conclusion that the claimant is ineligible for benefits, as discussed more fully below.

In the instant case, the review examiner denied benefits 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 . . . .

Although not specifically stated in G.L. c. 151A, § 24(b), other provisions of the Massachusetts Unemployment Statute show that unemployment benefits are intended to assist claimants in seeking a return to *full-time* work. *See, e.g.*, G.L. c. 151A, §§ 29 and 1(r), which provide for the payment of benefits only to those who are unable to secure a full-time weekly schedule of work.

Consolidated Finding # 20 provides that the claimant is healthy and nothing prevents him from being capable of working. The question before us is whether the claimant has demonstrated that he is available for and actively seeking full time work.

As for the claimant's availability for full-time work, the review examiner originally concluded that an ABA rule prohibiting law students from working more than 20 hours per week while in school prevented the claimant from being available for full-time work. After remand, the claimant has shown that the ABA rescinded this rule in 2014 and that his law school has no student work restriction. *See Consolidated Findings ## 16 and 17.*

He is, however, a full-time student. Because of this, the DUA disqualified him, operating under the assumption that an individual who is attending school full-time cannot also maintain full-time employment, unless they can demonstrate a history of full-time employment while attending school full-time. *See Exhibit 11.* We have previously held that full-time attendance at school does not result in a *per se* disqualification or presumption that the individual cannot also be available for full-time work. Each case must be considered individually. *See Board of Review Decision 0011 9491 62 (Feb. 19, 2015).*

Here, the record shows that the claimant is quite capable of both working and attending school full-time. He has shown that he has done this in high school, college, and while in law school. *See Consolidated Findings ## 5–10.* This satisfies the statutory requirement to be available for full-time work.

Lastly, we consider whether he has shown that he is actively searching for full-time work. Consolidated Finding # 1 provides that the claimant has been actively seeking any suitable work since filing his claim. He obtained a full-time job, beginning in June, 2019, and will be supplementing that with part-time work for two professors. *See Consolidated Findings ## 12–15.* Moreover, he testified that, since losing his last full-time job, he had been looking for full-time work in the hospitality and security fields, where he has prior experience as well as for the legal positions that he reported to the DUA. *See Exhibits 4–8.*<sup>1</sup> From this evidence, we can reasonably infer that the claimant has searched for full-time work throughout his period of unemployment.

We, therefore, conclude as a matter of law that the claimant has met his burden to show that he is capable of, available for, and actively seeking work within the meaning of G.L. c. 151A, § 24(b).

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<sup>1</sup> 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 review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning March 3, 2019, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.  
Chairman

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - September 25, 2019**



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.

AB/rh