

The claimant had a history of part-time work because she was in school. She limited her availability to part-time work during her benefit year because she intended to return to school and did not think she could work full-time while attending classes. For unemployment benefits, this does not constitute good cause for restricting availability to part-time employment. She is disqualified under G.L. c. 151A, § 24(b).

**Board of Review
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Issue ID: 0046 8182 58

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to award the claimant unemployment benefits for only a portion of her benefit year. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm in part and reverse in part.

The claimant filed a claim for unemployment benefits, which was denied in a determination issued on November 17, 2020. 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, finding the claimant eligible for benefits from the week beginning August 2, 2020, through August 29, 2020, in a decision rendered on April 1, 2020. We accepted the claimant's application for review.

Benefits were awarded after the review examiner determined that the claimant was capable of, available for, and actively seeking work from the week beginning August 2, 2020, through August 29, 2020, and, thus, was not disqualified under G.L. c. 151A, § 24(b), during that period. 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 was capable of, available for, and actively seeking work within the meaning of the law, is supported by substantial and credible evidence and is free from error of law, where she limited her availability in order to attend school.

Findings of Fact

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

1. The claimant filed a claim for unemployment with an effective date of May 3, 2020.

2. As of August 2, 2020, the claimant was pregnant.
3. As of August 2, 2020, the claimant was not enrolled in school.
4. The claimant has never worked full time.
5. The claimant worked part time until July 2020 when she was laid off.
6. As of August 2020, the claimant was able and available for part time work.
7. As of the first week of September 2020, the claimant began new part time work for a new employer.

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 conclusion is free from error of law. Upon such review, the Board adopts the review examiner's findings of fact and deems them to be supported by substantial and credible evidence. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant was available for work within the meaning of the law from the week beginning August 2, 2020 through August 29, 2020.

At issue is whether the claimant met the requirements 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

During August 2020, the claimant limited herself to part time work. Finding of Fact # 6. There are a limited number of circumstances, set forth under 430 CMR 4.45, when claimants are permitted to restrict their availability to part-time work. In relevant part, these regulations state as follows:

(1) An individual otherwise eligible for benefits may limit his/her availability for work during the benefit year to part-time employment provided, that the individual: . . .

(a) has a prior work history of part-time employment; establishes to the satisfaction of the commissioner good cause for restricting availability during the benefit year to part-time employment and that such good cause reason is the same as, or is related to that which existed during the prior work history of part-time employment; and is available during the benefit year for at least as many hours of work per week as used to establish the prior work history of part-time employment; or

(b) establishes to the satisfaction of the commissioner that the reasons for leaving his or her employment were for such an urgent, compelling, and necessitous nature as to make his or her separation involuntary; and establishes to the satisfaction of the commissioner that the same or related urgent, compelling, and necessitous reasons require the individual to limit availability for work during the benefit year to part-time employment; and such limitation does not effectively remove the individual from the labor force, . . .

At the hearing, the claimant testified that she had limited herself to searching for part-time work prior to the effective date of her claim because she was in school.¹ She further explained that she continued to limit herself to part-time employment after filing her claim because she wanted to return to school and believed her pregnancy would preclude her from attending school while also working a full-time job. Although the claimant does have a history of part-time employment, her intention to return to school does not constitute good cause for limiting her availability to part-time work. *See Conlon v. Director of the Div. of Employment Security*, 382 Mass. 19, 22–24 (1980). Similarly, the claimant’s wish to return to school does not constitute an urgent, compelling, or necessitous reason to limit her availability during her benefit year. Absent any other reason, we conclude the claimant failed to establish good cause for restricting her availability to part-time work within the meaning of 430 CMR 4.45(1).

We, therefore, conclude as a matter of law that the claimant was not capable of, available for, and actively seeking work within the meaning of G.L. c. 151A, § 24(b), during her benefit year.

¹ 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 affirmed in part and reversed in part. The claimant is denied benefits for the week beginning May 3, 2020, and for subsequent weeks, until she meets the requirements of G.L. c. 151A.

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 21, 2021



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

Member Charlene A. Stawicki, Esq. did not participate in this decision.

If this decision disqualifies the claimant from receiving regular unemployment benefits, the claimant may be eligible to apply for Pandemic Unemployment Benefits (PUA). The claimant may apply at: <https://ui-cares-act.mass.gov/PUA/>. The claimant may also call customer assistance at 877-626-6800 (select the number for your preferred language, then press # 2 for PUA).

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS
STATE DISTRICT 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.

LSW/rh