

Though a high school student, the claimant was only required to participate in remote instruction due to the COVID-19 pandemic, and her classes ended at 10:30 a.m. After 10:30 a.m. on weekdays and on weekends, the claimant was available for full-time work. She may not be disqualified from receiving unemployment benefits pursuant to G.L. c. 151A, § 24(b).

**Board of Review
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Issue ID: 0049 4813 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 deny unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant was placed on furlough from her job and filed a claim for benefits, effective March 15, 2020. In a determination issued on July 21, 2020, the DUA denied benefits. 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 from March 15 through June 6, 2020, in a decision rendered on May 17, 2021. 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 and, thus, she 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 availability to work while she was attending school remotely and when classes ended for the school year. Following a remand hearing, 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 original decision, which concluded that the claimant was not available for full-time work because she was in high school, is supported by substantial and credible evidence and is free from error of law in light of the fact that, due to the COVID-19 pandemic, the claimant was only in class for a few hours a day.

Findings of Fact

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

1. On 06/01/20, the claimant filed a claim for unemployment benefits with an effective date of 03/15/20.

2. The claimant was a senior in high school at the time of the effective date of her claim.
3. On 03/15/20, the claimant's classes began to be held remotely due to the COVID-19 pandemic. The claimant attended classes remotely Monday-Friday until 10:30 a.m.
4. Beginning 03/15/20, the claimant was available to work full-time Monday-Friday after 10:30 a.m. and anytime on weekends.
5. Prior to the pandemic, the claimant had been working for a retail store part-time (20-25 hours per week). She previously had another part-time job as a hostess in 2018.
6. The store closed at the onset of the pandemic. The claimant remained in contact with her employer on a weekly basis in hopes of returning to work. The claimant also looked for other part-time jobs during this time.
7. The claimant's high school classes ended on 05/29/20 and her graduation ceremony was held on 06/06/20.
8. When the store reopened on 06/16/20, the claimant returned to her part-time job.
9. Since 03/15/20, the claimant has had no medical restrictions restricting her ability to work full time.
10. Since 03/15/20, the claimant was available for full time work.
11. From 03/15/20 until 06/16/20, the claimant kept in contact with her employer on a weekly basis. On 06/16/20, she returned to her part-time job when the store reopened.
12. The claimant looked for other work as well. She looked for retail work or work in a restaurant.
13. On 07/21/20, the DUA sent the claimant a Notice of Disqualification stating she was disqualified from receiving unemployment benefits from the period beginning 03/15/20 and through 06/06/20 because she did not meet the requirements of Section 24(b) of the Law.

Credibility Assessment:

The claimant was a very credible witness. She provided logical, thoughtful responses to questions asked. She was available for full-time work when her high school classes transitioned to remote classes due to the pandemic.

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 consolidated findings, we reject the review examiner's legal conclusion that the claimant is ineligible for benefits.

Our decision in this case is governed by 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

In order to be eligible for benefits, a claimant must be available to work full-time. *See* G.L. c. 151A, §§ 1(r) and 29.

At issue in this case is the period from March 15 through June 6, 2020. At that time, the claimant was still a high school student. *See* Consolidated Findings ## 2 and 7. The review examiner's original decision to deny benefits was based, in part, on the fact that the claimant had not worked full-time while attending high school prior to filing her claim. *See* Consolidated Finding # 5. As we have previously held, attending school full-time does not result in a *per se* disqualification or in a presumption that a person cannot be available for full-time work. *See* Board of Review Decision 0011 9491 62 (Feb. 19, 2015). While a history of both attending school and working full-time is a factor, it is not conclusive evidence of a claimant's availability at the time of her unemployment claim. Each case must be considered individually and on its own merits.

Although the claimant was still in high school from March 15 through June 6, 2020, the consolidated findings show that her school schedule had changed dramatically due to the COVID-19 public health emergency. Specifically, from March 15 through May 29, 2020, her high school required only that she participate in remote instruction Monday through Friday until 10:30 a.m. After that and on weekends, she was available to work full-time hours in retail or restaurant employment. *See* Consolidated Findings ## 3, 10, and 12. Once classes ended on May 29, 2020, her availability opened up even more. *See* Consolidated Finding # 7. Thus, the claimant has established that she was available for full-time work.

It is also apparent that, during this period, the claimant was physically capable of working full-time hours. *See* Consolidated Finding # 9.¹

¹ During the hearing, the claimant testified that she had knee surgery on July 31, 2020, and was unable to work until September 7, 2020. The DUA will be asked to investigate the claimant's capability of working under G.L. c. 151A, § 24(b), during this period of her claim.

Finally, the consolidated findings indicate that the claimant continued to look for full-time work, even when she returned to her part-time job. *See* Consolidated Findings ## 11 and 12. Ordinarily, G.L. c. 151A, § 24(b), requires that a claimant actively search for work. An individual seeking unemployment benefits is required to make a reasonable, good faith effort to find new employment. *Evancho v. Dir. of Division of Employment Security*, 375 Mass. 280, 282 (1978). However, during the period in question, temporary modifications to the unemployment laws were implemented due to the COVID-19 pandemic. As permitted under federal law, the DUA temporarily waived the “work search requirements until such time as the COVID-19 emergency measures have been lifted.” DUA UI Policy and Performance Memo (UIPP) 2020.15 (Nov. 25, 2020), p. 2. This temporary policy was in effect from March 8, 2020, until June 14, 2021. *See* UIPP 2021.04 (May 20, 2021), pp. 1–2. Thus, we need not consider whether, at the time, the claimant made a reasonable, good faith effort to find new employment.

We, therefore, conclude as a matter of law that the claimant has shown that she was able and available for full-time work from March 15 through June 6, 2020, as required under G.L. c. 151A, § 24(b).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the period from March 15 through June 6, 2020, if otherwise eligible.



Charlene A. Stawicki, Esq.
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 30, 2021



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, 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.

AB/rh