

The claimant was not in unemployment within the meaning of G.L. c. 151A, §§ 29 and 1(r), because she limited her availability to part time hours in order to attend school. There was no indication from the record that she met any of the conditions under 430 CMR 4.45 for limiting her hours.

**Board of Review
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Issue ID: 0052 2926 44

Introduction and Procedural History of this Appeal

The employer appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to award unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on September 26, 2020. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the employer, the review examiner affirmed the agency's initial determination and awarded benefits in a decision rendered on April 29, 2022. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant accepted all available hours of work from the instant employer and, thus, was not disqualified under G.L. c. 151A, §§ 29 and 1(r). 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 employer's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant was in unemployment within the meaning of the law because she worked her regular part-time schedule during the week of August 16, 2020, and therefore accepted all work offered by the employer, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant was employed as a receptionist by the employer from September 10, 2019.
2. The claimant's last rate of pay [was] about \$18.00 per hour.
3. The claimant opened a claim for benefits with an effective date of August 16, 2020.

4. The claimant works every other weekend for the employer.
5. For the week ending August 22, 2020, the claimant worked 8.2 hours for the employer and earned \$104.55 in gross wages from the employer.
6. For the week ending August 22, 2020, the claimant worked her regular schedule for the employer.

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 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 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 eligible for benefits beginning August 16, 2020.

To be eligible for unemployment benefits, the claimant must show that she is in a state of unemployment within the meaning of the statute. G.L. c. 151A, § 29, authorizes benefits to be paid to those in total or partial unemployment. Those terms are defined by G.L. c. 151A, § 1(r), which provides, in relevant part, as follows:

(1) "Partial unemployment", an individual shall be deemed to be in partial unemployment if in any week of less than full-time weekly schedule of work he has earned or has received aggregate remuneration in an amount which is less than the weekly benefit rate to which he would be entitled if totally unemployed during said week; provided, however, that certain earnings as specified in paragraph (b) of section twenty-nine shall be disregarded. . . .

(2) "Total unemployment", an individual shall be deemed to be in total unemployment in any week in which he performs no wage-earning services whatever, and for which he receives no remuneration, and in which, though capable and available for work, he is unable to obtain any suitable work. . . .

Thus, the claimant is only eligible for benefits if she is physically capable of, available for, and actively seeking full-time work, and she may not turn down suitable work.

At the hearing, the employer's witness explained that the claimant informed the employer that she was only available to work a limited number of hours each week because of her academic schedule.¹ It is, therefore, apparent from the record that the claimant chose to limit her availability

¹ The employer's uncontested testimony in this regard, while not explicitly incorporated into the review examiner's findings, is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. 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).

to part-time hours. DUA regulations at 430 CMR 4.45 provide for certain circumstances when a claimant may remain eligible for benefits even though the individual is only available for part-time work. Attending school is not among those reasons. In the absence of any indication the claimant had another reason to limit her availability, she is ineligible for benefits.

We, therefore, conclude as a matter of law that the claimant was not in unemployment within the meaning of G.L. c. 151A, §§ 29 and 1(r) during the period beginning August 16, 2020.

The review examiner's decision is reversed. The claimant is denied benefits for the week of August 16, 2020, and for subsequent weeks, until she meets the requirements of G.L. c. 151A.



Charlene A. Stawicki, Esq.
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 31, 2022



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, Esq. did not participate in this decision.

**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