

The claimant has demonstrated that she did not restrict her availability for full-time work while a full-time law student. She has a history of going to school full time and working full-time and is willing to change her school schedule to accept full-time work. She is eligible for benefits under G.L. c. 151A, § 24(b).

**Board of Review
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Issue ID: 0052 3072 65

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 on April 29, 2020. She filed a claim for unemployment benefits with the DUA, effective April 19, 2020, which was initially approved. However, in a determination dated December 5, 2020, the DUA disqualified the claimant under G.L. c. 151A, § 24(b), as of April 19, 2020. 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 determination in a decision rendered on March 6, 2021. 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 because she attended law school full-time and, thus, was disqualified under G.L. c. 151A, § 24(b). 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 has not been available for, or actively seeking, full-time work while attending law school, is supported by substantial and credible evidence and is free from error of law, where there is evidence that the claimant has a prior history of working full-time hours while in college and is willing to change her school schedule to accept full-time work.

Findings of Fact

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

1. The claimant filed an initial claim for unemployment insurance benefits, effective 4/19/20. Prior to filing her claim, the claimant worked part-time in a clerical position for an investment business. The claimant worked a flexible schedule of 17 ½ hours per week. The claimant worked for her last employer

- from 3/2/20 until 4/29/20 and was laid off. The claimant filed her initial claim in advance of her separation because she was advised by the employer that she should do so because of delays in the processing of unemployment claims. The employer told the claimant she may have an opportunity to return to work in July or July; however, the employer did not rehire the claimant.
2. Prior to working for the investment business, the claimant worked full-time for 1 ½ years as a paralegal at a law firm. The claimant quit her work with the law firm on 2/28/20 because she accepted a part-time position with the investment business. Prior to quitting her full-time position, the claimant requested a reduction in her work schedule with the full-time employer. The claimant was enrolled in a full-time accelerated Juris Doctorate program. The claimant will graduate from the program one year early because she is planning to attend school year-round. The claimant wanted to work a reduced schedule of hours at the law firm while attending full-time classes and resume a full-time schedule during winter and summer academic breaks. The law firm was unwilling to accommodate the claimant's request for such a change in schedule.
 3. After being laid off from her last employer, the claimant did not believe that she was required to look for new work because of a work search waiver related to the COVID-19 pandemic. The claimant applied for several part-time clerical positions, such as secretarial and paralegal.
 4. On 5/18/20, the claimant began attending her first semester of graduate studies. The claimant attended online courses which met on Tuesday, Wednesday, and Thursday from 5:45 p.m. until 9:45 p.m. The claimant was required to be logged in during the class hours. The claimant's courses ended on or about August 13, 2020. Had she not been laid off, the claimant would have continued working at her part-time job while attending the online evening courses.
 5. On 8/24/20, the claimant began attending full-time school; she was enrolled in 13 credits of coursework. The claimant attended in-person classes for 1 ½ hours on Tuesday; 4 ½ hours on Wednesday; 1 ½ hours on Thursday; and 2 hrs., 45 minutes on Fridays. Additionally, the claimant attended online classes on Monday, Wednesday, and Friday. The claimant's classes met during both day and evening hours. The claimant was required to be in attendance at the online courses during scheduled meeting times.
 6. After filing her initial unemployment claim, the claimant completed a fact-finding questionnaire regarding her separation from her full-time work. In her responses, the claimant wrote in relevant part: "I was hoping to stay at (1st Employer). I offered to work part-time, and earlier/later hours than the 9-5 while in classes and full-time during winter and summer breaks but they needed someone full-time 9-5 so that arraignment (sic) was not going to work for them. I went on to find a part-time admin job at (2nd Employer) because they offered me flexible hours and some WFH options which is exactly what I need while being in school. Unfortunately, (2nd Employer) laid me off when covid hit and

now that I have day classes, it has been hard finding another employer with a schedule that will fit with mine.” The claimant also wrote: “I wanted to switch from full-time 40 hrs[.] to part time 20-25 during the semester and full-time over breaks but they did not accept this offer. I decided to take time off before school.” The claimant also wrote: “The other reason was that since they rejected my offer to work part-time, I wanted to take some time to travel then look for part-time/flexible jobs. After I took some time off to travel[,] I would be looking for a part-time job I could manage with law school. Unfortunately, when covid lockdown hit, I did not get to travel and started working almost immediately at (2nd Employer) after I left (1st Employer). I did this because they had a flexible schedule with hours so I could manage that with school.”

7. The claimant was not available to work from 9:00 a.m. until 5:00 p.m. while attending school. The claimant hoped to find part-time work with a schedule up to 25 hours per week. The claimant reasoned that 25 hours of work plus 15 hours of school equaled a full-time schedule.
8. While attending college as an undergraduate student, the claimant worked simultaneously at a variety of part-time positions. The claimant worked as a fitness instructor for 8 hours per week, while working as a nanny for 10 hours, and also held positions in student government which required her to work between 17 and 20 hours per week. The claimant received a tuition stipend for her service in the student government roles. The claimant graduated from her undergraduate program in May 2018.
9. On 12/5/20, the DUA issued the claimant a Notice of Disqualification, finding her ineligible for benefits under Section 24(b) for the week beginning 4/19/20 and indefinitely thereafter.
10. On 12/10/20, the claimant appealed the Notice of Disqualification.

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. After such review, the Board adopts the review examiner’s findings of fact except as follows. We reject the portion of Finding of Fact # 7 that states the claimant was unavailable to work between the hours of 9:00 a.m. and 5:00 p.m., because it is inconsistent with Finding of Fact # 5 and the claimant’s testimony. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, we disagree with the review examiner’s legal conclusion that the claimant has not met the requirements of G.L. c. 151A, § 24(b).

The review examiner disqualified the claimant 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 claimant's capability is not at issue. The primary question before us is whether the claimant has demonstrated that she is available for full-time work.

In her decision, the review examiner concluded that the claimant did not meet the availability requirement of G.L. c. 151A, § 24(b), as of April 19, 2020, because she was in law school full-time, and the review examiner decided that the claimant's history of working and going to school full-time as a college student was irrelevant. We disagree.

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 capable of both working and attending school full-time. She has shown that she had worked in excess of 40 hours per week while attending college as an undergraduate student, as her various part-time jobs together with her paid student government work amounted to an additional 35–38 hours per week on top of her full-time school. *See* Finding of Fact # 8. This demonstrates that, in the past, the claimant has been capable of working full-time while going to school full-time.

Finding of Fact # 6 suggests that the review examiner relied principally on the claimant's fact-finding questionnaire responses to disqualify her, and it appears as though the review examiner failed to consider other evidence in the record, including the claimant's explanation as to why she reported that her maximum availability was 25 hours per week. At the hearing, the claimant testified that a weekly work schedule of 25 hours per week is her preference, and that she would be willing to accept any work that was offered to her. *See* Exhibits 4, 5, and 6.¹ The DUA considers a claimant to be available for work where she has a preference but is willing to accept work that does not fulfill that preference. *See* DUA Adjudication Handbook, Chapter 4, Section 3, p. 14.

The claimant also testified to being able to work full-time while in school beginning in May, 2020, being able to work full-time outside of the traditional 9:00 a.m. to 5:00 p.m. work day, and that she could have accommodated a full-time work schedule by working mornings before classes, in between classes, evenings, and weekends, while she was not in school.²

The review examiner did not find the claimant's testimony that she was willing to accept a new, full-time position while attending law school to be credible. Such assessments are within the scope of the fact finder's role and unless they are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. *See* School Committee of Brockton v. Massachusetts Commission

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).

² This testimony is also part of the unchallenged evidence in the record.

Against Discrimination, 423 Mass. 7, 15 (1996). “The test is whether the finding is supported by “substantial evidence.”” Lycurgus v. Dir. of Division of Employment Security, 391 Mass. 623, 627 (1984) (citations omitted.) “Substantial evidence is ‘such evidence as a reasonable mind might accept as adequate to support a conclusion,’ taking ‘into account whatever in the record detracts from its weight.’” Id. at 627–628, *quoting* New Boston Garden Corp. v. Board of Assessors of Boston, 383 Mass. 456, 466 (1981) (further citations omitted.)

It seems that the review examiner did not believe the claimant would accept a new full-time position while in law school because she had resigned from a full-time job and was unable to work full-time day shifts. This ignores the fact that the claimant has already demonstrated that, while in college, she was able to pull together full-time work hours through various part-time positions that accommodated her full-time school attendance. It also ignores the claimant’s current willingness to do the same. Because the review examiner did not attribute any weight to this other substantial evidence, we do not believe her assessment is reasonable in relation to the evidence presented.

In addition, the review examiner concluded that the claimant had not been actively seeking full-time work as required under G.L. c. 151A, § 24(b), and was also ineligible to receive benefits on these grounds.

Ordinarily, under federal and Massachusetts law, claimants are only eligible for benefits if they are actively seeking full-time work. In this case, because the period in question began on May 18, 2020, we must also consider temporary modifications to the unemployment law brought about by the COVID-19 pandemic.

In March 2020, Congress enacted the Emergency Unemployment Insurance Stabilization and Access Act (EUISAA) which, among other things, permitted states to modify their unemployment compensation law and policies with respect to work search and good cause on an emergency temporary basis as needed to respond to the spread of the COVID-19 pandemic.³ The U.S. Department of Labor (DOL) has also advised states that they have significant flexibility in implementing the able, available, and work search requirements.⁴

In accordance with the EUISSA and the DOL guidance, the DUA 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. On June 15, 2021, the work search waiver will be reinstated. UIPP 2021.04 (May 20, 2021). This temporary policy was made retroactive to March 8, 2020. UIPP 2021.02 (Jan. 22, 2021), p. 2. This means that, from the effective date of her claim through the week ending June 12, 2021, the claimant may not be disqualified under G.L. c. 151A, § 24(b), for failure to actively search for work.

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

³ See EUISAA, Pub. Law 116-127 (Mar. 18, 2020), § 4102(b).

⁴ See U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 10-20 (Mar. 12, 2020), 4(b).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning April 19, 2020, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - June 28, 2021



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.

JMO/th