

**Coursework for the claimant's two online classes can be completed at any time because the lectures are recorded. Given this flexibility, the claimant is available for full-time work while also attending class and she is not disqualified under G.L. c. 151A, § 24(b).**

**Board of Review  
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**Issue ID: 0053 3666 78**

### 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.

Following her separation from employment, the claimant filed a claim for unemployment benefits with the DUA, effective August 13, 2020. In a determination dated September 28, 2020, the DUA denied the claimant benefits for the period beginning September 6, 2020. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by the claimant, the review examiner reversed in part and affirmed in part the agency's initial determination. In a decision rendered on November 4, 2020, the review examiner found the claimant eligible for benefits through the week of October 18, 2020 and ineligible for benefits thereafter. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not available for work beginning the week of October 25, 2020 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 was not available for full-time work while she was taking classes, is supported by substantial and credible evidence and is free from error of law.

### Findings of Fact

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

1. The claimant worked for the employer, a cleaning company, as a cleaner, beginning in November 2019.
2. On August 13, 2020, the claimant filed her claim for unemployment insurance benefits with the Department of Unemployment Assistance (DUA) with an effective begin date of August 9, 2020.

3. Beginning September 6, 2020, the claimant has been capable of, available for, and has searched for work at least three times each week she has claimed benefits.
4. The claimant has looked for work in security, fast food and retail.
5. On September 28, 2020, the DUA issued the claimant a Notice of Disqualification determining the claimant was not entitled to receive benefits for the period beginning September 6, 2020 and for an indefinite period of time thereafter until she meets the requirements of the law because it had not been established she was capable of, available for, and actively seeking work in an occupation for which she was reasonably fitted.
6. On October 28, 2020, the claimant started college taking two Criminal Justice courses, 3 credits each, for a total of 6 credits.
7. The claimant's program is online.
8. The claimant spends about 25 to 30 hours each week fulfilling her course requirements.
9. The claimant's courses are scheduled to end on December 22, 2020.
10. The claimant will not leave school to accept full-time employment.

#### 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 ultimate 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 Finding of Fact # 10 as inconsistent with the evidence of record. In adopting the remaining findings, we deem 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 not available for full-time work beginning the week of October 25, 2020.

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.


The claimant has been performing work search activities at least three times each week since she began claiming benefits. Finding of Fact # 3. Additionally, there is nothing in the record to suggest the claimant was not capable of full-time work during the entire period on appeal. Therefore, the sole question before us is whether the claimant has demonstrated that she was available for full time work beginning the week of October 25, 2020.

The review examiner concluded that the claimant was unable to work full time because she was taking two online courses totaling 25 to 30 hours of coursework each week. Findings of Fact ## 6 and 7. However, 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. *See* Board of Review Decision 0011 9491 62 (Feb. 19, 2015).<sup>1</sup> Each claimant's availability must be assessed on a case-by-case basis. *Id.*

A claimant may still be available for work within the meaning of the law if he or she can demonstrate that his or her school schedule makes it possible to also work a full-time job. *See* Board of Review Decision 0015 4424 19 (Sept. 28, 2015).<sup>2</sup> Here, the claimant's classes are pre-recorded and available online to be completed based on the claimant's availability. As such, the claimant has the flexibility to complete her coursework while also accommodating a full-time work schedule.<sup>3</sup> Since there is no indication from the record that the claimant's availability was limited for any other reason, she has satisfied the statutory requirement to be available for full-time work.

We, therefore, conclude as a matter of law that the claimant is capable of, available for, and actively seeking work beginning October 25, 2020.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning October 25, 2020 and for subsequent weeks if otherwise eligible.



**BOSTON, MASSACHUSETTS**

**DATE OF DECISION - December 16, 2020**

Paul T. Fitzgerald, Esq.  
Chairman



Michael J. Albano  
Member

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<sup>1</sup> Board of Review Decision 0011 9491 62 is an unpublished decision, available upon request. For privacy reasons, identifying information is redacted.

<sup>2</sup> Board of Review Decision 0015 4424 19 is also an unpublished decision, available upon request. For privacy reasons, identifying information is redacted.

<sup>3</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).

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 contact the PUA call center at (877) 626-6800 and ask to speak to a Tier 2 PUA Supervisor.

**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](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.

LSW/rh