

The claimant was not in unemployment within the meaning of G.L. c. 151A, §§ 29 and 1(r), because he was a full-time student and could only work a limited part-time schedule. He did not have good cause for limiting his availability to part-time work.

**Board of Review
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Issue ID: 0058 5134 24

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 March 23, 2021. 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 September 29, 2022. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant was in partial unemployment as of the effective date of his claim and, thus, was not disqualified under G.L. c. 151A, §§ 29(b) 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 partial unemployment because he worked on a part-time basis and generally accepted all hours offered to him, 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 filed a new claim for unemployment benefits effective November 1, 2020, with a benefit year end of October 30, 2021. The Department of Unemployment Assistance calculated the claimant's weekly benefit rate as \$109.00 and his earning's disregard as \$36.33.
2. The claimant began working as a part-time (approximately 10-15 hours per week) crew member for the employer, an ice cream shop, on October 4, 2019.

3. The employer pays the claimant \$13.00 per hour.
4. The claimant is a student and works when he is available.
5. Since October 4, 2021, the has not had a fixed schedule. The claimant tells the employer when he is available, and the employer schedules him for those shifts. The claimant has consistently worked the part-time schedule for which he was hired.
6. Since November 1, 2020, the claimant has not refused any work that was offered to him by the employer.
7. The claimant separated from the employer on June 8, 2021.

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 in partial unemployment.

To be eligible for unemployment benefits, the claimant must show that he 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.

Claimants are only eligible for benefits if they are physically capable of, available for, and actively seeking full-time work, and they may not turn down suitable work.

The claimant in this case could only work a limited part-time schedule because he was a student, and his academic obligations precluded him from working regular full-time hours. Findings of Fact ## 2, 4, and 5. As there is no indication from the record that the claimant had good cause for

limiting his availability to part-time work pursuant to 430 CMR 4.45, we conclude that the claimant was not in unemployment during the pendency of his claim.

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), beginning November 1, 2020.

The review examiner's decision is reversed. The claimant is denied benefits for the week of November 1, 2020, and for subsequent weeks, until he meets the requirements of G.L. c. 151A.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 28, 2022



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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