

In light of the claimant’s inconsistent testimony, the review examiner reasonably concluded that the claimant was not available for full-time work while still in high school. The Board reasonably inferred that she became available for full-time employment after her high school graduation and became eligible for benefits pursuant to G.L. c. 151A, § 24(b). While the DUA had temporarily suspended the requirement to actively search for work in response to the COVID-19 public health emergency, the claimant could not be disqualified for failing to actively search for a full-time job.

**Board of Review
19 Staniford St., 4th Floor
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member
Michael J. Albano
Member**

Issue ID: 0061 6949 16

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 we affirm in part and reverse in part.

The claimant separated from her employer and filed a claim for unemployment benefits with the DUA, effective January 3, 2021, which was denied in a determination issued on February 6, 2021. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, the review examiner affirmed the agency’s initial determination and denied benefits in a decision rendered on April 30, 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 nor actively seeking work and, thus, she 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 disqualified the claimant due to not actively seeking work and not being available for full-time work while in high school, 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 worked part-time as a Hostess for the employer until separating from employment.
2. The claimant filed a claim for unemployment benefits effective 01/03/2021.

3. The claimant attends [Town A] High School full-time. The claimant is participating in her schooling virtually and will remain virtual until her graduation.
4. The claimant is required to log into her schooling from 7:30 a.m. to 12:00 p.m. Monday through Friday.
5. The claimant is expected to graduate in May 2021.
6. The claimant is available to work part-time while she is participating in her schooling.
7. The claimant has previously been available to work from 3:30 p.m. to 9:00 p.m. Monday to Friday and 3:30 p.m. until needed on the weekends.
8. The week beginning 01/06/2021, the claimant does not have any medical conditions that prevent her from working full-time.
9. The week beginning 01/06/2021, the claimant searched for part-time work in the restaurant and grocer industries six (6) to seven (7) times per week by searching online and submitting job applications.
10. The claimant did not search for full-time work because she is unable to work full-time due to her schooling.
11. The claimant does not have a history of full-time work while taking classes full-time.

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 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 disagree with the review examiner's legal conclusion that the claimant is ineligible for benefits for the duration of her unemployment claim.

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

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 January 3, 2021, which is the effective date of the claimant’s unemployment claim, 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 laws 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.¹ 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.²

In accordance with the EUISSA and the DOL guidance, 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, 2021.³ This means that the claimant may not be disqualified under G.L. c. 151A, § 24(b), for failure to actively search for work during this period.

However, in order to be eligible for benefits, a claimant must also be available to work full-time. *See* G.L. c. 151A, §§ 1(r) and 29. In her appeal, the claimant asserts that she has been available to work full-time hours while in school after noon on weekdays and on weekends. We note that, during the hearing, held on April 29, 2021, her testimony was inconsistent. At different times, she testified both that she had been available to work full-time since January 3, 2021, but that she was looking for only for part-time work because of school. When the review examiner asked directly whether she would be able to accept a full-time job, if offered one, the claimant responded no, not at the current time.⁴ Ultimately, the review examiner found that the claimant was available to work only part-time while in school. *See* Finding of Fact # 6.

“The review examiner bears ‘[t]he responsibility for determining the credibility and weight of [conflicting oral] testimony, . . .’” Hawkins v. Dir. of Division of Employment Security, 392 Mass. 305, 307 (1984), *quoting* Trustees of Deerfield Academy v. Dir. of Division of Employment Security, 382 Mass. 26, 31–32 (1980). 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 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

¹ *See* EUISAA, Pub. Law 116-127 (Mar. 18, 2020), § 4102(b).

² *See* U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 10-20 (Mar. 12, 2020), 4(b).

³ *See* DUA Unemployment Insurance Policy & Performance Memo (UIPP) 2021.02 (Jan. 22, 2021), p. 2 and UIPP 2021.04 (May 20, 2021).

⁴ 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).

Boston, 383 Mass. 456, 466 (1981) (further citations omitted). Given the claimant's inconsistent responses as to whether she was available for full-time work while in school, we believe Finding of Fact # 6 is reasonable in relation to the evidence presented.

While the DUA permits individuals to limit their availability to part-time employment under certain circumstances, attending school is not one of those. *See* 430 CMR 4.45.

However, the claimant was to graduate from high school in May, 2021. *See* Finding of Fact # 5. Specifically, graduation was expected to be on May 21, 2021.⁵ Once school ended, we can reasonably infer that the claimant was available for full-time work.

We, therefore, conclude as a matter of law that the claimant was able and available for work within the meaning of G.L. c. 151A, § 24(b), beginning after her high school graduation.

The review examiner's decision is affirmed in part and reversed in part. The claimant is denied benefits for the period January 3 through May 22, 2021. She is entitled to receive benefits for the week beginning May 23, 2021, and for subsequent weeks if otherwise eligible.

N.B. – In order to qualify for benefits starting with the week beginning June 13, 2021, the claimant must also actively search for full-time work.

BOSTON, MASSACHUSETTS
DATE OF DECISION - July 28, 2021



Paul T. Fitzgerald, Esq.
Chairman



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.

⁵ The claimant provided the scheduled graduation date during the hearing. This testimony is also part of the unchallenged evidence introduced at the hearing.

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