

While enrolled in an approved TAA training program, the claimant could not be disqualified for not being available for full-time work. When that training program ended, he demonstrated that he continued to be eligible for PEUC benefits pursuant to G.L. c. 151A, §§ 29 and 1(r), because while working part-time, he remained available for full-time work. However, once hired to work 40 hours a week, he was fully employed and ineligible for any benefits.

**Board of Review
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Issue ID: 0062 1650 30

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 filed an unemployment claim, effective July 14, 2019, and became eligible for regular unemployment benefits. He was subsequently determined to be eligible to receive Trade Adjustment Assistance (TAA benefits), as well as Trade Readjustment Assistance cash benefits (TRA benefits) while participating in an approved full-time training program, pursuant to the Trade Act of 1974, as amended.¹ In a determination dated March 23, 2021, the DUA noted that there was an issue as to whether the claimant remained eligible for benefits as of February 2, 2020, but authorized continued benefits because it had not determined the issue within 21 days. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the employer, the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on October 28, 2021. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was disqualified under G.L. c. 151A, §§ 29 and 1(r), because he had been either working full-time or, while working part-time, did not demonstrate that he was available for full-time work. After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we remanded the case to the review examiner to consider the claimant's participation in an approved TAA training program and his availability for work thereafter. Both parties attended the remand hearing. Subsequently, the review examiner issued his consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's decision, which disqualified the claimant while working both full-time and part-time for the employer, is supported by substantial and credible evidence and is free from error of law, where the record now shows that, for a period

¹ The Trade Adjustment Assistance Reauthorization Act of 2015 (TAARA 2015) (Pub. L. 114-27).

of time, he was enrolled in an approved TAA training program and was available for full-time work thereafter.

Findings of Fact

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

1. The claimant filed a 2019-01 claim for unemployment insurance benefits. The effective date of the claim is 7/14/2019. The weekly benefit amount on the claim is \$795.00. The earnings disregard on the claim is \$265.00.
2. The claimant worked for a certain employer (Business 1) from 8/22/2002 to 6/28/2019. The DUA approved the claimant to participate in the Trade Adjustment Assistance program (TAA program) after this employment ended.
3. The claimant attended a TAA-approved full-time training program at [College]. This program was a machinist technology program. This program was scheduled to run from 9/04/2019 to 5/12/2020. The DUA approved the claimant to receive TRA benefits while he attended this program.
4. The employer is a manufacturer. The claimant began part-time work for the employer on 2/02/2020.
5. The claimant's part-time work for the employer was part of [College's] co-op program. This part-time work for the employer via the college's co-op program was part of the claimant's full-time TAA-approved training program. The claimant had to complete two hundred and fifty work hours for the co-op program. The claimant worked twenty-four hours per week for the employer. The community college limited the claimant to part-time work. The employer paid the claimant \$15.00 per hour. The claimant worked in this role from 2/02/2020 through 3/15/2020.
6. [College] ended its co-op program on 3/15/2020 due to the COVID-19 public health emergency.
7. The employer hired the claimant as a direct part-time employee on 3/16/2020. The employer hired the claimant as its own employee because the claimant's co-op program had ended abruptly, and the employer wanted to continue the claimant's employment. The claimant continued to work as a manufacturing associate for twenty-four hours per week. The employer did not offer more than twenty-four hours because the claimant had only worked for it for six weeks and he was still taking classes in his program at [College]. The employer continued to pay the claimant \$15.00 per hour. The claimant continued to work in this part-time manufacturing role into August 2020.
8. When the employer hired the claimant to work twenty-four hours per week on 3/16/2020, the claimant was not available to work full-time. The claimant was

still attending classes in his program at [College]. The claimant was not available to work full-time while taking these classes.

9. The claimant completed his program at [College] in May 2020.
10. The employer increased the claimant's hours to thirty-five hours per week on 8/17/2020. The employer did not offer more than thirty-five hours per week. The claimant continued to work thirty-five hours per week with his \$15.00 payrate until October 2020.
11. The claimant was available to work full-time when the employer increased his hours to thirty-five hours per week on 8/17/2020.
12. The employer increased the claimant hours and pay on 10/18/2020. The employer increased the claimant's hours to forty hours per week. The employer increased the claimant's pay to \$17.00 per hour. The claimant worked forty hours per week with this \$17.00 payrate until he resigned on 1/11/2021.
13. Since 2/02/2020, the claimant has not had any illness, physical condition, or psychological condition that has rendered him unable to work full-time.
14. The claimant exhausted his regular unemployment benefits on 1/18/2020.
15. The claimant was eligible to receive TRA benefits for the period 1/19/2020 through 3/28/2020.
16. The claimant was potentially eligible for Pandemic Emergency Unemployment Compensation (PEUC) benefits for the period 3/29/2020 through 7/11/2020 [sic].
17. The employer did not pay the claimant more than \$1,060.00 for any week in the period from pay period ending 2/15/2020 through pay period ending 1/02/2021.

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 consolidated findings are supported by substantial and credible evidence; and (2) whether the review examiner's original conclusion is free from error of law. After such review, the Board adopts the review examiner's consolidated findings of fact except as follows. In Consolidated Finding # 16, the end date for potential Pandemic Emergency Unemployment Compensation (PEUC) benefits of July 11, 2020, is incorrect, as Remand Exhibit 24 shows that the claimant's potential eligibility period for this program ran until September 4, 2021.² In adopting the remaining findings, we deem them to be supported by substantial and

² Remand Exhibit 24 is a printout of a screen from the DUA's electronic record-keeping system, UI Online, showing the claimant's potential benefits, listed by specific program, under his 2019-01 claim. While not explicitly incorporated into the review examiner's findings, the information in this exhibit is part of the unchallenged evidence

credible evidence. As discussed more fully below, we reject the review examiner’s legal conclusion that the claimant was ineligible for benefits while working for the employer on a part-time basis.

The review examiner disqualified the claimant pursuant to G.L. c. 151A, §§ 29 and 1(r). G.L. c. 151A, § 29 authorizes benefits be paid only to those in “total unemployment” or “partial unemployment.” These terms are in turn 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. . . .

The consolidated findings provide that the claimant began working part-time for the employer during his benefit year as part of a co-op program in [College’s] machinist technology program. *See Consolidated Findings ## 1 and 3–5*. Importantly, the claimant was enrolled in the machinist technology program as part of an approved TAA training program, originally scheduled to run from September 4, 2019, through May 12, 2020. *See Consolidated Finding # 3*. The co-op assignment for the employer, which began on February 2, 2020, was part-time, 24 hours per week, and the employer paid him for his hours of work. *See Consolidated Findings ## 4 and 5*. His income was supplemented with TRA benefits, a weekly cash unemployment benefit authorized for eligible TAA participants. *See Consolidated Finding # 3*. However, the community college abruptly ended the co-op program on March 15, 2020, due to the COVID-19 public health emergency, and his TRA cash benefits were stopped after March 28, 2020. *See Consolidated Findings ## 6 and 15*.

Although his TRA weekly benefits were terminated, the claimant remained potentially eligible for extended regular unemployment benefits as part of the PEUC program. *See Consolidated Finding # 16 and Remand Exhibit 24*. After the community college shut down its co-op program in March, the record indicates that the claimant was able to continue his training program remotely, completing it at some point in May, 2020. *See Consolidated Findings ## 8 and 9*.³ During this

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).

³ The claimant testified that he continued attending classes online after the college closed due to the pandemic. Remand Exhibit 20 is a TAA progress report from the Department of Career Services, which refers to the claimant continuing his studies beyond May 12, 2020. The claimant’s testimony and Remand Exhibit 20 are also part of the unchallenged evidence in the record.

time, he continued working part-time for the employer, who hired him directly when his co-op program was canceled. *See Consolidated Finding # 7.*

The review examiner's original basis for disqualifying the claimant during the period February 2, 2020 through October 17, 2020, was that he had not shown that he was available for full-time work while employed part-time for the employer. It is true that, pursuant to G.L. c. 151A, §§ 1(r)(1) and 29(b), an individual with a part-time job is not eligible for partial unemployment benefits, unless he can demonstrate that he remained able, available, and actively seeking full-time work. However, from February 2, 2020, until some point in May, 2020, the claimant was enrolled in an approved TAA training program. Trade Act regulations at 20 C.F.R. § 618.615(b)(2), state:

(vi) As further described at § 618.780(b)(1)(ii), State or Federal UI statutes relating to the able, available, or active work search requirements as well as refusal to accept work will not disqualify a worker for UI or other program benefits, during any week of training approved under § 618.610, including part-time training.

Thus, the claimant may not be disqualified pursuant to G.L. c. 151A, §§ 29(b) and 1(r)(1), for not being available for full-time work while still enrolled in his approved TAA training program.

We next consider the claimant's eligibility after his training program. Consolidated Findings ## 8, 10, and 11 indicate that the only time the claimant was not available for full-time work was while he was taking classes at the community college. From this we can infer that, after his training program ended in May, the claimant was available for full-time work, but the employer did not offer more than part-time hours until finally increasing them to 40 hours a week on October 18, 2020. *See Consolidated Findings ## 7 and 10–12.* During this period, the consolidated findings also indicate that he had been able to work full-time. *See Consolidated Finding # 13.*

In order to meet the definition of partial unemployment while working part-time, the claimant will be eligible for a weekly benefit amount in any week that he earned an amount which is less than the sum of his weekly benefit rate plus the amount of earnings which are disregarded, as specified in G.L. c. 151A, § 29(b). In this case, the claimant had a weekly benefit rate of \$795.00 and an earnings disregard of \$265.00. Consolidated Finding # 1. He is, therefore, eligible for benefits in any week that he earned less than \$1,060.00 (\$795.00 plus \$265.00). Consolidated Finding # 17 provides that the employer did not pay him more than \$1,060.00 in any week during the relevant period.

We need not consider whether the claimant had been actively searching for work during the weeks at issue, because, as authorized under the Emergency Unemployment Insurance Stabilization and Access Act (EUISAA) and the U.S. Department of Labor, the DUA temporarily waived the work search requirements in response to the COVID-19 public health emergency from March 8, 2020, through the week ending June 12, 2021.⁴

As for the weeks between October 18, 2020, and January 9, 2021, we agree with the review examiner that the claimant is not eligible for benefits. Because he was working full-time, he is

⁴ *See* DUA UI Policy and Performance Memo (UIPP) 2021.04 (May 20, 2021).

considered to have been fully employed and not in total or partial unemployment within the meaning of G.L. c. 151A, §§ 29 and 1(r).

We, therefore, conclude as a matter of law that the claimant may not be denied benefits while enrolled in an approved TAA training program pursuant to 20 C.F.R. § 618.615(b)(2)(vi). We further conclude that, after that training program ended and while the claimant worked part-time for the employer, he met the eligibility requirements of G.L. c. 151A, §§ 29 and 1(r).

The review examiner's decision is affirmed in part and reversed in part. The claimant is entitled to receive benefits during the period February 2 through October 17, 2020, if otherwise eligible. The claimant is denied benefits from October 18, 2020, through January 9, 2021.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 11, 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.

AB/rh