

Full-time high school student established that she was available for full-time work after school hours and when school was not in session. She is eligible for benefits under G.L. c. 151A, § 24(b).

**Board of Review
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Issue ID: 0063 3684 02

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 her position with her employer and filed a claim for unemployment benefits with the DUA, effective May 31, 2020, which was denied in a determination issued on March 9, 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 5, 2021. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant had not been available for full-time work and, thus, she was disqualified under G.L. c. 151A, § 24(b). 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 obtain additional evidence about the claimant's ability to work full-time while not in school. The claimant attended the remand hearing and, thereafter, the review examiner issued her 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 original decision, which concluded that the claimant was not available for full-time work because she was a full-time high school student, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant's appeal is from a determination which denied her benefits under Section 24(b) of the Law for the week-beginning 5/31/20 and indefinitely thereafter.

2. The claimant had worked part-time for her most recent employer. The claimant worked part time because she is a full-time high school student.
3. The claimant most recently worked as a cashier for a non-profit organization approximately 8 hours per week.
4. The claimant was not in school during the week beginning 5/31/20. The claimant filed a new claim for unemployment benefits on 6/5/20. At the time she filed, she did not know when school would be starting for the 2020-2021 academic year. She was able to work full-time at that time. The claimant was available for full time work while not in school.
5. Since filing for unemployment benefits, the claimant has sought work with a fast food restaurant. She has performed only one search activity per week with the same employer.
6. The claimant does not have a prior history of working full-time while attending school full time.
7. The claimant would not quit school to accept full time work.
8. The claimant's high school actually began its 2020-2021 academic year during the week beginning 9/6/20. Classes began on 9/12/20. When classes began, the claimant was going to school remotely. When classes began, the claimant was required to attend classes Monday through Friday from 9 a.m. to 2 p.m.
9. During the 2020-2021 school year, the claimant's school schedule did not change.
10. When the 2020-2021 school year resumed, the claimant was capable of working full-time. She could work Monday through Friday from 3 p.m. to 11 p.m. The claimant could perform positions in the restaurant or retail industry.
11. The claimant was 17 years old as of 5/31/20. The claimant became aware that she was legally permitted to work full time during the COVID-19 public health emergency after her appeal in April 2021, when she researched how she could become eligible for unemployment benefits by being available for full-time work.

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. Upon such review, the Board adopts the review examiner's consolidated 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 is ineligible for benefits.

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

In order to be eligible for benefits, a claimant must be available to work full-time. *See* G.L. c. 151A, §§ 1(r) and 29. Because, prior to filing her claim, the claimant had only worked part-time and because she was a full-time high student, the review examiner had concluded that the claimant was not available for full-time work.

As we have previously held, attending school full-time does not result in a *per se* disqualification or in a presumption that a person cannot be available for full-time work. *See* Board of Review Decision 0011 9491 62 (Feb. 19, 2015). While a history of both attending school and working full-time is a factor, it is not conclusive evidence of a claimant's availability at the time of her unemployment claim. Each case must be considered individually and on its own merits.

On appeal, the claimant asserted that she made herself available for full-time work when she was not required to be in school. We remanded to obtain more specific details about her availability.

The consolidated findings now provide that from the first week of the claimant's benefit year, which began on May 31, 2020, through the week ending September 12, 2020, the claimant was not in school and she was available for full-time work. *See* Consolidated Findings ## 4 and 8. They further provide that when the 2020 – 2021 academic year began, she was available to work in the restaurant or retail industry after her school day ended at 2:00 p.m., from 3:00 p.m. until 11:00 p.m. *See* Consolidated Finding # 10. We also note that the claimant testified that she would work weekends, if necessary.¹ This evidence demonstrates that, beginning with the effective date of her claim, the claimant has been available for full-time work.

Another requirement to be eligible for benefits under G.L. c. 151A, § 24(b), is that a claimant actively search for work. An individual seeking unemployment benefits is required to make a reasonable, good faith effort to find new employment. *Evancho v. Dir. of Division of Employment Security*, 375 Mass. 280, 282 (1978). To meet the active work search requirement, the DUA expects claimants to complete at least three work search activities per week. *See* DUA Adjudication Handbook, chapter 4, § 4(B).

Consolidated Finding # 5 provides that, since filing her claim, the claimant performed only one search activity per week with the same employer. Ordinarily, that limited effort would not satisfy the active work search requirement. However, because the period in question began on May 31,

¹ While not explicitly incorporated into the review examiner's findings, this portion of the claimant's testimony is part of the unchallenged evidence 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).

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 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.² The U.S. Department of Labor (DOL) also advised states that they have significant flexibility in implementing the able, available, and work search requirements.³

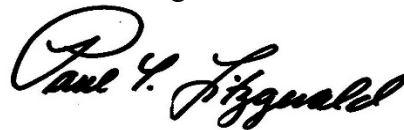
In accordance with the EUISSA and the DOL guidance, the DUA temporarily waived the “work search requirements until such time as the COVID-19 emergency measures have been lifted.” DUA UI Policy and Performance Memo (UIPP) 2020.15 (Nov. 25, 2020), p. 2. This temporary policy was in effect from March 8, 2020, until June 14, 2021. *See* UIPP 2021.04 (May 20, 2021), pp. 1 – 2. 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.

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

² *See* EUISAA, Pub. Law 116-127 (Mar. 18, 2020), § 4102(b).

³ *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 May 31, 2020, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 27, 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.

AB/rh