

While in her medical assistant training program, the claimant remained available to work full-time hours during evening, overnight, and weekend shifts. She is eligible for benefits under G.L. c. 151A, § 24(b).

**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: 0064 3546 14

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 employment and filed a claim for unemployment benefits with the DUA, which was initially approved, but in a determination issued on February 24, 2021, she was denied benefits from January 24 through May 22, 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 23, 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 further evidence about the claimant's availability to work while she was in school. Following the remand hearing, 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 had not been available to work while enrolled in her full-time medical assistant training program, is supported by substantial and credible evidence and is free from error of law, in light of the claimant's availability for evening, overnight, and weekend shifts in numerous fields of work.

Findings of Fact

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

1. The claimant worked as a full-time Front Desk Supervisor until she became separated from employment.

2. The claimant has previous work experience as a concierge, in the medical field, and in retail.
3. The claimant filed a new claim for unemployment benefits effective 03/08/2020.
4. During the week beginning 01/25/2021 and the subsequent weeks thereafter, the claimant had no medical conditions preventing her from working full-time.
5. Beginning the week of 01/25/2021, the claimant enrolled in a Medical Assistant program at Rhode Island College in [Town A], RI.
6. The claimant participated in her classes online Monday, Tuesday, Wednesday, and Thursday from 9:00 a.m. to 3:00 p.m.
7. Every Friday between 01/25/2021 and 04/20/2021, the claimant participated in an in-person clinical learning component at the school, where the students practiced the clinical skills that they learned throughout the week on other students.
8. The clinical learning component took place from 9:00 a.m. to 3:00 p.m. each Friday.
9. The claimant dedicated five (5) hours to studying per week, separate and apart from attending and participating in classes.
10. The claimant studied three (3) days per week, on different days each week, depending on when she had additional time to dedicate to her studies.
11. The claimant's last day of classes was 04/20/2021.
12. Beginning the week of 01/25/2021 through 04/20/2021, the claimant was available to work forty (40) hours per week. The claimant was available to work Monday through Friday from 3:00 p.m. to 7:00 a.m. or 8:00 a.m., and anytime on Saturday and Sunday.
13. The claimant participated in an unpaid externship from 04/26/2021 to 05/21/2021 at a hospital.
14. The claimant's externship was separate and in addition to the clinical learning component she participated in while taking classes.
15. The claimant attended the externship Monday through Friday from 8:30 a.m. to 4:30 p.m.

16. Beginning 04/26/2021 through 05/21/2021, the claimant was available to work forty (40) hours per week. The claimant was available to work Monday through Friday from 4:30 p.m. to 7:00 a.m. or 8:00 a.m.
17. After her classes ended on 05/21/2021, the claimant did not have any scheduling conflicts that prohibited her from working full-time.
18. The claimant graduated from the program on 06/03/2021.
19. The claimant does not have a history of working full-time while attending school-full time.
20. On 12/22/2020, the claimant submitted a Training Program Opportunities (TOPS) program application to the Department of unemployment Assistance (DUA).
21. On 02/18/2021, the DUA issued the claimant a notice of disqualification indicating that her TOPS application was denied because the program she was attending was not approved by the Massachusetts One Stop Employment System.
22. During the week beginning 01/25/2021 and the subsequent weeks thereafter, the claimant searched for full-time work in retail; the hospitality field as a concierge, working the front desk, and supervisory or managerial positions; the medical field; and in dental offices three (3) to four (4) times per week by searching online and submitting job applications.

Credibility Assessment:

The claimant's testimony is deemed to be credible. The claimant provided consistent, detailed, and forthcoming testimony at both the original hearing and the remand hearing. There is nothing in the record to suggest that any of the claimant's testimony was not credible.

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. We further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented. However, based upon these consolidated findings, we reject the review examiner's legal conclusion that the claimant is ineligible for benefits, as discussed below.

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 the claimant did not have a prior history of working full-time and going to school full-time, the review examiner concluded that the claimant was not available for full-time work while participating in her training program. As we have consistently 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. For this reason, we remanded to inquire more specifically about the claimant's school schedule and availability to work.

After remand, the consolidated findings establish that, while in school, the claimant was available to work evening, overnight, and weekend shifts. While attending classes Monday through Thursday and clinical practice on Friday between January 25 and April 20, 2021, her availability began after 3:30 p.m. and she could work 40 hours per week. *See* Consolidated Finding # 12. From April 26 through May 21, 2021, her availability to work 40 hours a week started after 4:30 p.m. on weekdays. *See* Consolidated Findings ## 13, 15, and 16. We can reasonably infer that, during this period, she remained available to work weekend shifts as well.

Moreover, the record shows that the claimant searched for and had the experience to fill the type of jobs in which evening, overnight, and weekend work was available. *See* Consolidated Findings ## 1, 2, and 22. We also note that, during this time, she also was physically capable of full-time work. *See* Consolidated Finding # 4.

The consolidated findings provide that the claimant submitted a Training Opportunities Program application to participate in an approved training program pursuant to G.L. c. 151A, § 30(c). Had she been approved, she would have been excused from the obligation to be available for work under G.L. c. 151A, § 24(b). *See* G.L. c. 151A, § 24(c). Since she was not, she must show that, while participating in her training program from January 25 through May 21, 2021, she remained available for full-time work. As stated above, she has done so.

We, therefore, conclude as a matter of law that the claimant has met the requirement to be able and available for work within the meaning of G.L. c. 151A, § 24(b).¹

¹ During the period that the COVID-19 state of emergency remained in effect, from March 8, 2020, through June 14, 2021, the DUA had waived the obligation under G.L. c. 151A, § 24(b), to actively search for work. *See* DUA UI Policy and Performance Memo (UIPP) 2020.15 (Nov 25, 2020), p. 2; UIPP 2021.04 (May 20, 2021), pp. 1–2.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning January 24, 2021, through May 22, 2021, if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 27, 2021



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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