

The claimant is exempt from the G.L. c. 151A, § 24(b) availability requirement while approved for training benefits under G.L. c. 151A, § 30(c). He is denied benefits during the weeks in which he is not approved under § 30(c), and for which he is not available for full-time work, as required by § 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: 0066 8704 92

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 a claim for unemployment benefits with an effective date of March 22, 2020. On April 2, 2021, the DUA issued a determination providing that the claimant was ineligible for benefits under G.L. c. 151A, § 24(b), because he was not available for work as of January 3, 2021. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by the claimant, the review examiner affirmed the agency's initial determination to deny benefits and implemented an issue start date of August 30, 2020. The review examiner's decision was rendered on May 1, 2021. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant did not meet the availability requirement of G.L. c. 151A, § 24(b), and, thus, was disqualified. 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 concluded that the claimant did not meet the availability requirement of G.L. c. 151A, § 24(b), while he was attending full-time 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's appeal is from a determination which denied him benefits under Section 24(b) of the Law for the week beginning 1/3/21, and indefinitely thereafter.

2. The claimant was attending a full-time Bachelor's Degree program at UMASS Lowell.
3. The claimant quit his most recent part-time employment when he started his schooling on 9/1/20. The claimant needed to spend a lot of time on his studies and was not able to work while attending the full-time program.
4. The claimant has no prior history of working full-time while going to school full-time.
5. During the Fall Semester 2020-2021, the claimant was enrolled in 15 hours of lecture classes, which resulted in 30 hours of outside class work. The claimant needed to maintain a certain GPA in order to receive his financial aid.
6. In the Spring Semester 2020-2021, the claimant began taking 15 credit hours, but recently dropped 5 credits hours.
7. The claimant started part-time work on 4/17/21 after he was denied UI benefits.
8. The claimant is not looking for full-time work while he is attending the full-time program at UMASS Lowell.

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 is ineligible for benefits during all of the weeks in which he was enrolled in school, because he did not meet the availability requirement of G.L. c. 151A, § 24(b).

G.L. c. 151A, § 24(b), 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

The above provision requires that claimants be capable of, available for and actively seeking full-time work while claiming unemployment benefits. In the instant case, neither the claimant's capability, nor his work search efforts are at issue, as there is no indication in the record that he has not met these requirements while claiming benefits. Only his availability for work is at issue based upon his enrollment in a bachelor's degree program at a Massachusetts university.

The review examiner concluded that the claimant has not been available for full-time work since he began attending school full-time on September 1, 2020. She concluded that, because the

claimant has not met the availability requirement under G.L. c. 151A, § 24(b), he is not eligible for benefits beginning on August 30, 2020. We disagree with the review examiner's decision to deny benefits to the claimant during all of the weeks in which he has been enrolled in school.

We take administrative notice of the information contained in the UI Online System, which shows that the claimant was approved for unemployment training benefits under G.L. c. 151A, § 30(c), between September 1, 2020, and December 18, 2020. Approval for benefits under G.L. c. 151A, § 30(c), results in a waiver of the availability requirement of G.L. c. 151A, § 24(b). *See* 430 CMR 9.01.

In light of the approval of the claimant's benefits under G.L. c. 151A, § 30(c), we conclude as a matter of law that the claimant cannot be disqualified from receiving benefits under G.L. c. 151A, § 24(b), for any weeks that he has been approved under G.L. c. 151A, § 30(c). The claimant is therefore eligible for the weeks ending September 5, 2020, through December 19, 2020.

The claimant, however, remains ineligible for benefits pursuant to G.L. c. 151A, § 24(b), as of the week beginning December 20, 2020, because he has not been approved for training benefits during this period and was not able to work full-time due to his studies. *See* Finding of Fact # 3.

The review examiner's decision is affirmed in part and reversed in part. We affirm that part of the decision which denied benefits to the claimant as of the week beginning December 20, 2020. However, we reverse that part of the decision which denied benefits to the claimant between the weeks ending September 5, 2020, and December 19, 2020. During this period, he is entitled to benefits, if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 30, 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.

SVL/rh