

The claimant became available for full-time work after his part-time job closed due to the COVID-19 pandemic and his full-time academic program transitioned to remote, asynchronous classes. He may not be disqualified under G.L. c. 151A, § 24(b). However, when he returned to his part-time position on July 10, 2020, and was no longer available for full-time work, he was no longer eligible for benefits.

**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: 0067 7375 40

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 the DUA, which was denied in a determination issued on April 21, 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 and denied benefits in a decision rendered on June 15, 2022. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not capable of, available for, and actively seeking suitable work and, thus, 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 information about the claimant's availability for work after the effective date of his claim. The claimant attended the remand hearing. 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 decision, which concluded that the claimant did not meet the eligibility requirements for benefits because his academic commitments required him to limit his availability to part-time work and he was not completing regular work search activities, 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 and credibility assessment are set forth below in their entirety:

1. The claimant filed a claim for Unemployment Insurance (UI) benefits with an effective date of April 5, 2020.

2. Prior to filing this claim, the claimant worked as a part-time, seasonal retail associate, a position he began in June of 2018.
3. Since filing for unemployment benefits, the claimant attended school on a full-time basis in order to complete his bachelor's degree. The claimant had a strict weekly class schedule and spent approximately 28 to 32 hours per week on schooling.
4. In the middle of March 2020, the claimant was informed that his seasonal retail position would be closing for at least two weeks pending more information on the COVID-19 pandemic.
5. On March 29, 2020, the claimant was informed his job was closed until further notice because of the COVID-19 public health emergency.
6. On March 30, 2020, the claimant's full-time bachelor's degree program moved to an online format due to the COVID-19 public health emergency. While online, classes were asynchronous and performed at the claimant's leisure for about three (3) to four (4) hours per week total.
7. Beginning March 30, 2020, the claimant was available for a full-time schedule of employment, while still attending his now online, asynchronous bachelor's degree program.
8. During the week beginning April 5, 2020, the claimant was available to work a full-time schedule while also attending his online, asynchronous bachelor's degree for approximately three (3) to four (4) hours in total.
9. On July 10, 2020, the claimant resumed his part-time position as a seasonal retail associate.

Credibility Assessment:

The claimant's testimony regarding his availability once his bachelor's program moved to an online format on March 30, 2020, is deemed credible. The claimant provided credible evidence that he would have been able to maintain a full-time position beginning March 30, 2020, because once his classes became online and asynchronous his schooling took significantly less time, allowing more for employment.

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, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant did not meet the availability and work search eligibility requirements during the entire period on appeal.

At issue in this case is the claimant's eligibility under 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

Under this section of the law, the claimant bears the burden of proving that he is able to work, available for work, and actively seeking suitable employment. Ordinarily, under federal and Massachusetts law, claimants are only eligible for benefits if they are physically capable of, available for, and actively seeking full-time work, and they may not turn down suitable work. In this case, because the claimant seeks benefits from April 5, 2020, the effective date of his claim, through the present, 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 law 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, as well as flexibility in determining the type of work that is suitable given an individual's circumstances.²

The review examiner initially disqualified the claimant, in part because he was not searching for work during the period on appeal. However, in accordance with the EUISSA and the DOL guidance, the DUA temporarily waived the work search requirements until the COVID-19 emergency measures have been lifted.³ Consistent with this guidance, the DUA reinstated the work search requirements for all claimants as of June 15, 2021.⁴ As the claimant filed his claim for benefits effective April 5, 2020, he cannot be disqualified on the grounds that he was not searching for work between the effective date of his claim and June 15, 2021, when the requirement was reinstated.

The review examiner also found that the claimant ineligible for benefits because she found that his full-time academic schedule precluded him from performing work in a full-time capacity. However, on remand, the record shows that the claimant's academic program changed substantially as a result of the COVID-19 pandemic. *See Consolidated Finding # 6.* Because the claimant's classes transitioned to an asynchronous learning model, his schedule was such that he was available to work a full-time job while also meeting his academic requirements. Consolidated

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 UI Policy and Performance Memo (UIPP) 2020.15 (Nov. 25, 2020), p. 2.

⁴ *See* UIPPP 2021.04 (May 20, 2021) pp. 2-3.

Findings ## 6–8. In the absence of any indication from the record that the claimant was otherwise not capable of working a full-time schedule, we conclude that the claimant met the modified eligibility requirements as of April 5, 2020.

However, the claimant returned to his part-time position as a seasonal retail associate on July 10, 2020. Consolidated Finding # 9. During the hearing, he testified that he would not have left that part-time position in order to accept full-time employment.⁵ Accordingly, he was no longer available for full-time work and did not meet the eligibility requirements as of that date.

We, therefore, conclude as a matter of law that the claimant may not be disqualified under G.L. c. 151A, § 24(b) during the period between April 5, 2020, and July 11, 2020, because he has met the temporary eligibility requirements adopted by the DUA in response to the COVID-19 pandemic.

The review examiner’s decision is affirmed in part and reversed in part. The claimant is entitled to benefits for the period between April 5, 2020, and July 11, 2020. The claimant is denied benefits for the week beginning July 12, 2020, and for subsequent weeks, until such time as he meets the requirements of the law.

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 28, 2022



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, Esq. 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

⁵ 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).

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.

LSW/rh