

Board rejects the review examiner’s conclusion that the claimant was not available for or actively seeking full-time work, as it mischaracterized the claimant’s testimony and appears to have been based upon his personal assumption about the availability of a single parent to work. Held the claimant was eligible under G.L c. 151A, § 24(b).

**Board of Review
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Issue ID: 0070 5793 44

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 job, filed a claim for unemployment benefits with the DUA, effective March 22, 2020, and was initially approved for benefits. However, in a determination issued on June 24, 2021, the claimant was disqualified beginning January 3, 2021. She 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 August 31, 2022. We accept the claimant’s application for review.

Benefits were denied after the review examiner determined that the claimant was not available for, or actively seeking, full-time work and, thus, she was disqualified under G.L. c. 151A, § 24(b). 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, while enrolled in a training program and caring for her children, the claimant was not available for, or actively seeking, full-time work, 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 filed a claim for unemployment benefits with an effective date of March 22, 2020.
2. Prior to filing her claim, the claimant worked as a medical secretary.
3. The claimant has three minor children for whom she is the primary caregiver. The claimant does not have anyone who can help her with childcare.

4. On or about January 2, 2021, the claimant enrolled in a part-time job training program. She spent an average of 5 or 6 hours each day satisfying the requirements of the program. She graduated from the program in September 2021. The job training program was not a program that was approved by the Department of Unemployment Assistance.
5. From January 2, 2021, and thereafter, the claimant had some medical issues for which she was being treated but none of the issues prevented her from being working [sic].
6. From January 2, 2021, to September 1, 2021, the claimant was the fulltime primary care giver of her three minor children, and she attended her job training program.
7. From January 3, 2021, and thereafter, the claimant looked for full or part-time work through online job listings at least 3 times per week. The claimant search[ed] for remote jobs as an administrator in the medical filed. She primarily used web-based job programs such as Indeed.
8. On June 24, 2021, the DUA sent the claimant a Notice of Disqualification stating she was disqualified from receiving unemployment from January 3, 2021, and thereafter because she did not meet the requirements of Section 24(b) of the Law.

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.

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

Ordinarily, in order to be eligible for benefits, a claimant must be able, available, and actively seek full-time work. *See* G.L. c. 151A, §§ 1(r) and 29. However, because the eligibility period in question began on January 3, 2021, 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.¹ The U.S. Department of Labor (DOL) also advised states that they have significant flexibility in implementing the able, available, and work search requirements.²

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.”³ This temporary policy was in effect from March 8, 2020, until June 15, 2021.⁴ 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.

Finding of Fact # 7 states that, from January 3, 2021, and thereafter, the claimant looked for full- or part-time work at least three times per week. Thus, even during months when the work search obligation was waived, she was actively searching for work. However, in his conclusion the review examiner states that the claimant was seeking remote part-time work, and then summarily concludes that she was not looking for full-time work. This is both inconsistent with Finding of Fact # 7 and not supported by the claimant’s testimony.

While the claimant did testify that she was seeking remote work, she never said that she only sought part-time jobs. Specifically, in response to the review examiner’s question about where she was looking and what kind of work she was looking for, the claimant described looking for administrative work in the medical or banking fields, using Indeed or Craig’s List, and that she’d apply for them, even if part-time. In our view, this indicates that she would apply for all jobs of that nature, whether full- or part-time.⁵ It mischaracterizes her testimony to say that she was not seeking full-time work.

As a separate ground, the review examiner concludes that the claimant was not available for full-time work because she was providing full-time care to her children after schooling ended. We reject this conclusion as unsupported by the record. Rather, it appears to be based solely upon the review examiner’s personal assumption that the claimant could not have worked full-time while balancing these other obligations. In fact, the record shows that, although the claimant was her children’s primary caregiver and attending a job training program, the program was part-time and online. *See* Findings of Fact ## 4 and 6. She never testified that she would not have been available for full-time work. In fact, she testified that, if she had obtained a full-time job, she would have quit the training program.⁶

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

⁴ *See* UIPPP 2021.04 (May 20, 2021), pp. 1–2.

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).

⁶ This portion of the claimant’s testimony is also part of the unchallenged evidence in the record.

In short, both the findings and underlying record demonstrate that the claimant was able, available for, and actively seeking full-time work during the period at issue. We, therefore, conclude as a matter of law that the claimant met the eligibility requirements of G.L. c. 151A, § 24(b).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning January 3, 2021, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 26, 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

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