

Pursuant to G.L. c. 151A, § 24(b), the claimant is not entitled to benefits during weeks in which she was enrolled in school and not available for full-time work or actively searching for work.

**Board of Review
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Issue ID: 0070 6487 35

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, effective March 8, 2020. On December 1, 2021, the DUA issued a determination denying benefits to the claimant. 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, but modified the dates of ineligibility, in a decision rendered on June 23, 2022. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant did not meet the availability and work search requirements 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 and work search requirements of G.L. c. 151A, § 24(b), from April 5, 2021, through February 12, 2022, while participating in a training program, is supported by substantial and credible evidence and is free from error of law, where the record shows that the claimant's welding program did not begin until May 3, 2021, and ended on February 8, 2022.

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 her benefits under Section 24(b) of the Law for the weeks beginning 6/13/21 and indefinitely thereafter.
2. The claimant was attending a full-time welding program at Lincoln Tech from Monday through Thursday, from 4:00 p.m. to 11:00 p.m., and on Fridays, varying hours online.

3. The claimant attended the course from 4/6/21 until she completed the program on 2/8/22.
4. The claimant was not available for work during the weeks beginning 4/5/21 until she completed the program during the week ending 2/12/22.
5. The claimant had been regularly employed as a part time housekeeper.
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6. The claimant searched for work periodically two times a week online and through the school. She searched for welding positions.
7. The claimant has no prior history of working full-time while going to school full-time. The claimant would not have quit school to accept full-time work.
8. The claimant had no transportation during this time. She did not obtain transportation until [the] end of December, 2021, two months before she finished the welding program.

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. After such review, the Board adopts the review examiner's findings of fact except as follows. We set aside the portion of Finding of Fact # 3, which states that the claimant began her welding program on April 6, 2021, and the portion of Finding of Fact # 4, which states that the claimant was not available for work beginning on April 5, 2021, as they are not supported by the record.

In adopting the remaining findings, we deem 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 prior to May 2, 2021, and beyond the week ending February 5, 2022.

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, the claimant's capability is not at issue, as there is no indication in the record that she has not met this requirement while claiming benefits. Only her availability and work search efforts are at issue, as these were affected

by her enrollment in a welding program, which actually ran from May 3, 2021, until February 8, 2022. *See* Findings of Fact ## 3–4 and Exhibit # 4.¹

The review examiner found that the claimant was not available for work while enrolled in the welding program, she would not have quit school in order to accept full-time employment, and she was only looking for work periodically twice per week. *See* Findings of Fact ## 4 and 6–7. The claimant did not provide more specific evidence to establish whether she met the work search requirement in any particular week during the period at issue. Based on the above findings, the review examiner concluded that the claimant had not met the availability and work search requirements under G.L. c. 151A, § 24(b), and she was not eligible for benefits from as of April 5, 2021, through February 12, 2022.

While we agree with the review examiner’s decision to deny benefits during all of the weeks in which the claimant was enrolled in the welding program, we disagree with the dates of ineligibility in the decision, as they do not accurately reflect the evidence in the record.²

The claimant had submitted an application to DUA to be approved for training benefits pursuant to G.L. c. 151A, § 30(c). Her application, which was filled out by the welding program’s Director of Admissions, states that classes began on May 3, 2021. Accordingly, the claimant is only ineligible for benefits as of the week ending May 8, 2021.³ Furthermore, the claimant’s last day of classes was on Tuesday, February 8, 2022, and there is no indication in the record that the claimant was not available for, or actively seeking, work during the remainder of that week. Since it appears that the claimant met the requirements of the statute during the majority of the week ending February 12, 2022, her ineligibility will extend only through the week ending February 5, 2022.⁴

We, therefore, conclude as a matter of law, that the claimant did not meet the availability and work search requirements of G.L. c. 151A, § 24(b), while enrolled in a welding program.

¹ The claimant’s Training Opportunities Program (TOP) application (Exhibit # 4), shows that the claimant’s classes began on May 3, 2021, and not in April, 2021. The claimant’s TOP application, while not explicitly incorporated into the review examiner’s findings, 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).

² In response to the COVID-19 pandemic, the DUA adopted a policy waiving the work search requirement as of March 8, 2020. *See* DUA UI Policy and Performance Memo (UIPP) 2020.15 (Nov. 25, 2020); UIPP 2021.02, (Jan. 22, 2021) p. 2. The work search requirement was subsequently reinstated on June 15, 2021. *See* UIPP 2021.04 (May 20, 2021). Thus, we note that the claimant was not required to actively search for work prior to June 15, 2021. However, the work search waiver is inconsequential in this decision, as the claimant’s availability is also at issue, and failure to meet just one of the three requirements of G.L. c. 151A, § 24(b), will result in a denial of benefits.

³ We note that approval for training benefits under G.L. c. 151A, § 30(c), results in a waiver of the availability and work search requirements of G.L. c. 151A, § 24(b). 430 CMR 9.01. In this case, we note information contained in the DUA’s electronic record-keeping system, UI Online, which shows that the claimant’s application for such benefits was denied by the agency on October 5, 2021. Consequently, the availability and work search requirements of the statute were not waived for the claimant during the period in which she was enrolled in the welding program.

⁴ *See* DUA Adjudication Handbook, Chapter 4, § 3(B)(15). This section states that claimants who travel for personal reasons for the majority of the week are not available under G.L. c. 151A, § 24(b), and we believe that the same principle applies in other situations where a claimant’s availability is at issue.

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 between the weeks ending May 8, 2021, and February 5, 2022. However, we reverse that part of the decision which denied benefits to the claimant prior to May 2, 2021, and during the week ending February 12, 2022. The claimant is entitled to benefits prior to May 2, 2021, and as of the week ending February 12, 2022, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 18, 2022



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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.

SVL/rh