

Claimant, who would not accept full-time work while he was attending school on a full-time basis, was ineligible for benefits under G.L. c. 151A, § 24(b), because he was not available for full-time employment. The claimant does not have to repay benefits paid over a year before the DUA's determination, as the disqualification for those weeks was time-barred under G.L. c. 151A, § 71.

**Board of Review
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Issue ID: 0070 6933 98

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 separated from employment and filed a claim for unemployment benefits with the DUA, which was determined to be effective April 12, 2020, and was initially approved. However, the agency subsequently denied benefits in a determination issued on August 21, 2021. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, which the claimant attended, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on September 29, 2021. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was ineligible for benefits because he was not available for full-time work while attending school on a full-time basis, as required by 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 for additional evidence. The claimant attended the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact and credibility assessment. 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 is ineligible for benefits because he is not available for full-time employment while attending school full-time, 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 new claim for unemployment benefits with an effective date of 04/12/2020.
2. Prior to filing his unemployment claim, the claimant worked a part-time, varied schedule as a major appliance salesperson for a retailer. The claimant became separated from employment due to the COVID-19 pandemic.
3. On an unknown date, prior to filing his unemployment claim, the claimant began attending school at Roger Williams University (“School”) to obtain his bachelor’s and law degrees. The claimant participated in the School’s “3+3” program in which he attended the bachelor’s degree program, then transitioned to the law school. The claimant attended School full time.
4. For the week ending 04/18/2020 and subsequent weeks, the claimant had no physical limitations or medical issues to prevent him from working.
5. During the week ending 04/18/2020 and subsequent weeks, the claimant looked for work about two days a week, including remaining in contact with his most recent employer. The claimant limited his search to two days a week because he expected to return to work with his most recent employer when restrictions for COVID-19 pandemic closings were lifted. Department of Unemployment Assistance [sic]
6. As of the spring 2020, the claimant was attending the School’s undergraduate program. The spring 2020 final exams ended on 05/07/2020.
7. Within the two weeks before 06/26/2020, the claimant’s most recent employer reopened, and the claimant returned to work part-time.
8. Around 7/02/2020, the claimant began participating in online courses with Freedom Trial Realty School to obtain his real estate license.
9. During the weeks ending 07/04/2020 through 08/01/2020, the claimant sat for online real estate courses, approximately five hours a week. He was able to participate in the classes at his own pace, in the hours he was not working for the part-time employer.
10. On 08/11/2020, the claimant participated in the School’s new student orientation virtually.
11. On 08/17/2020, the claimant began attending the School’s law degree program fall 2020 semester. The School’s fall 2020 final exams concluded on 12/14/2020.
12. On 01/15/2021, the claimant sat for his real estate license exam. He received the test results that he passed the exam on the same day.

13. The School's spring 2021 classes began on 01/25/2021. The final exams concluded on 05/19/2021.
14. During the 2020 spring and fall semesters and the 2021 spring and fall semesters, the claimant was available to work evenings, Fridays and on weekends.
15. During the 2020 and 2021 summers, the claimant was available to work full time, until the fall, when his school year began.
16. During the 2020 spring and fall semesters and the 2021 spring semesters [sic], the claimant restricted his availability because he was attending school full time and devoted additional hours to studying each day.
17. During the week ending 06/19/2021, the claimant looked for employment on two days using the School's online law school job search application and by contacting a local landscape company.
18. During the week ending 06/26/2021, the claimant looked for employment on two days using the School's online law school job search application.
19. On an unknown date during the week ending 06/26/2021, the claimant interviewed with a law firm as a full-time law clerk/legal intern. At the end of the interview, the employer made the claimant an informal offer of employment.
20. During the week ending 07/03/2020, the claimant looked for work.
21. Around 07/05/2021, the claimant began working full-time at a law firm as a law clerk/legal intern. The claimant reduced his schedule to part-time in the fall 2021 when he returned to school full-time.
22. The claimant would not leave school or reduce his school hours if offered suitable full-time work because completing school was his priority.
23. The claimant has never worked full-time while attending school full-time.

Credibility Assessment:

The claimant's production of requested documents clarified the dates of events, including the beginning and ending of the semesters of School and real estate school he attended while collecting unemployment benefits. Further, using the printout the claimant provided of his bank statements, he confirmed around when he began his part-time and full-time employment during his benefit year. Although the claimant did not provide the requested work search documentation from 06/15/2021 through the date of the remand hearing, there was nothing in his testimony about his work search from 06/15/2021 through the start of full-time employment that was deemed

incredible. Given the totality of the claimant's testimony over both hearings, his documentation provided at both the initial and the remand hearing, the claimant's testimony is deemed 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 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 also believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented.

The review examiner's decision to deny the claimant's application for benefits derives from 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

The unemployment statute reflects the Legislature's expectation that an unemployed worker will only be eligible for benefits if he is unable to obtain full-time work.¹ Although the review examiner initially concluded that the claimant failed to meet the requirements of G.L. c. 151A, § 24(b), we remanded the case to take further testimony and evidence regarding the claimant's academic schedule, his availability for full-time work, and his work search activities. After remand, we agree with the review examiner's initial conclusion that the claimant did not meet these requirements while he was attending school on a full-time basis.

After remand, the review examiner found that the claimant restricted his availability because he was attending school full-time during the spring 2020, fall 2020, and spring 2021 terms. *See Consolidated Finding # 16.* The claimant would not have sacrificed his full-time training program for full-time employment. *See Consolidated Finding # 22.* He has no prior history of attending school on a full-time basis while working full-time. *See Consolidated Finding # 23.*

The spring 2020 term began before the claimant opened his claim, effective April 12, 2020. *See Remand Exhibit # 8.*² The spring 2020 term ended on May 7, 2020. *See Consolidated Finding*

¹ *See* G.L. c. 151A, §§ 1(r) and 29(a) and (b). The DUA has promulgated regulations that allow claimants to be available for part-time work under certain circumstances, none of which are applicable here. *See* 430 CMR 4.45. During the remand hearing, the claimant suggested that the agency's August 11, 2021, determination awarding benefits under G.L. c. 151A, §§ 29(b) and 1(r) (Issue ID# 0071 1443 87), supersedes his disqualification in this case. *See Remand Exhibit # 12.* However, as the review examiner's initial decision properly pointed out, G.L. c. 151A, § 24(b), requires establishment of "good cause" to restrict one's availability to part-time. Full-time attendance at school does not constitute good cause. *See also* DUA Adjudication Handbook, Chapter 4, § 3(B)(1), n. 10. The claimant's approval for benefits under G.L. c. 151A, §§ 29(b) and 1(r), is superseded by the disqualification under G.L. c. 151A, § 24(b) and 430 CMR 4.45.

² We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. *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. Thus, we conclude that the claimant was unavailable for full-time work and would be ineligible for benefits from April 12, 2020, through May 9, 2020.

The review examiner found that the claimant was available to work full-time during the summer of 2020, until his fall school term began.³ *See Consolidated Finding # 15.* Where the claimant returned to work for his part-time employer in approximately June of 2020, he would still be eligible for benefits as long as he worked all hours that were available to him, and as long as he reported his gross weekly wages to the DUA when certifying for benefits.

The claimant's full-time studies did not resume until August 17, 2020. *See Consolidated Finding # 11.* Thus, during this period, the claimant was available for full-time work and eligible for benefits from May 10, 2020, through August 15, 2020.

However, he was again unavailable for full-time work and was ineligible for benefits during his fall semester from August 16, 2020, through December 12, 2020, while attending school full-time. *See Consolidated Finding # 11.*

The review examiner found that the claimant resumed school for the spring 2021 term on January 25, 2021, and finished his studies on May 19, 2021. *See Consolidated Finding # 13.* Thus, the claimant was again unavailable for full-time work and was ineligible for benefits from January 24, 2021, through May 22, 2021.

After the end of the spring 2021 term, the claimant was available for and searched for full-time work. *See Consolidated Findings ## 17–20.* On or about July 5, 2021, the claimant began working full-time for a law firm, reducing his schedule to part-time when his school year resumed in the fall 2021 term. *See Consolidated Finding # 21.* He may not collect benefits while working a full-time job, but he did meet the availability requirements of G.L. c. 151A, § 24(b), between May 23, 2021, and July 3, 2021.

However, our analysis does not end there. We must also consider whether the agency has the authority to reclaim all of the benefits which it now deems the claimant to have been overpaid. G.L. c. 151A, § 71, provides, in relevant part, as follows:

The commissioner may reconsider a determination whenever he finds that (1) an error has occurred in connection therewith; or (2) wages of the claimant pertinent to such determination but not considered in connection therewith have been newly discovered; or (3) benefits have been allowed or denied or the amount of benefits fixed on the basis of misrepresentation of fact; provided, however, that with respect to (1) and (2) no such redetermination shall be made after one year from the date of the original determination; and provided, further, that with respect to (3) no such redetermination shall be made after four years from the date of the original determination

³ We note that the claimant spent approximately five hours per week participating in a self-paced, online program to obtain a real estate license from approximately July 2, 2020, through August 1, 2020. *See Consolidated Findings ## 8–9.* Where the claimant's participation in this real estate program was only part-time, we conclude that it did not restrict his availability to part-time work during the summer of 2020.

Put most simply, this section of law gives the DUA the authority to reconsider an original determination within one year, if the reason for the reconsideration relates to an error or to newly discovered wages. If the reason for the reconsideration is due to a misrepresentation of fact which occurred in connection with the original determination, then the agency has four years to issue a new determination regarding eligibility.

The review examiner did not consider this provision in her decision. However, we can find nothing in the record which indicates that a misrepresentation of fact led to an incorrect original determination in this case. The review examiner did not enter into the record any documentation or information which would lead us to conclude that the claimant misrepresented his status to the agency during the summer of 2020. Therefore, we are confident that no fault on the claimant's part led to the overpayment.

In this case, the claimant had to certify each week that he was able, available, and actively seeking work in order to obtain his unemployment benefits. The agency was determining each week whether he was eligible for benefits. Because the DUA found the claimant to be eligible for benefits and subsequently paid him based upon his weekly certifications, the DUA is deemed to have determined him eligible for each week at issue. Pursuant to G.L. c. 151A, § 71, it had one year from each week to issue a redetermination as to the whether he was able, available for, and actively seeking work.

Where the underlying determination here was issued on August 12, 2021, the agency may only seek repayment of benefits disbursed after the week beginning August 16, 2020.

We, therefore, conclude as a matter of law that the claimant was not eligible for benefits during periods that he was either working full-time or in school full-time pursuant to G.L. c. 151A, § 24(b). We further conclude that, pursuant to G.L. c. 151A, § 71, recovery of any overpaid benefits from April 12, 2020, through August 15, 2020, is time-barred and, thus, the claimant is not responsible for repaying any benefits during that period.

The review examiner's decision is affirmed in part and reversed in part. The claimant is eligible for benefits under G.L. c. 151A, § 24(b), from April 12, 2020, through August 15, 2020; from December 13, 2020, through January 23, 2021; and from May 23, 2021, through July 3, 2021, if otherwise eligible. The claimant is ineligible for benefits from August 16, 2020, through December 12, 2020; and from January 24, 2021, through May 22, 2021.



Charlene A. Stawicki, Esq.
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION - February 25, 2022



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.

JPCA/rh