

The claimant is not required to be available for work under G.L. c. 151A, § 24(b), while enrolled in an approved training program under G.L. c. 151A, § 30(c). He is denied benefits during the other weeks when he was not available for full-time work.

**Board of Review
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Issue ID: 0070 7600 37

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 28, 2021. On July 7, 2021, the DUA issued a determination that the claimant was ineligible for benefits under G.L. c. 151A, § 24(b), because he was not available for work as of June 6, 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 but implemented an issue end date of September 11, 2021. The review examiner's decision was rendered on October 8, 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 a 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), between June 6, 2021, and September 11, 2021, is supported by substantial and credible evidence and is free from error of law, where the DUA's electronic record-keeping system, UI Online, shows that the claimant was approved for unemployment training benefits between July 12, 2021, and August 12, 2021.

Findings of Fact

The review examiner's findings of fact are set forth below in their entirety:

1. The claimant filed a 2021-01 claim for unemployment insurance benefits. The effective date of this claim is 3/28/2021.
2. The claimant has not had any employment since March or April, 2020.

3. The claimant attended a commercial driver's license program at New England Tractor Trailer Training School from 6/07/2021 through 9/09/2021. The claimant attended the school program Monday through Thursday from 7:00 a.m. to 12:00 p.m. The claimant also attended the program on Fridays for up to eight hours. The claimant's commute to and from the school was forty-five minutes.
4. The claimant completed the CDL program at New England Tractor Trailer Training School on 9/09/2021.
5. New England Tractor Trailer Training School wrote a letter to the claimant. The letter is dated 7/07/2021. The letter reads, in part, "[The claimant] is currently enrolled full time at New England Tractor Trailer Training School of North Andover, MA...in our 160 hour CDL A program. He started attending full-time classes on 6/07/2021 and he is expected to complete the academic requirements of the program and graduate on 8/12/2021."
6. The claimant's school commitment rendered him unavailable to work full-time in the period from 6/07/2021 through 9/09/2021.
7. Since 9/10/2021, the claimant has not had any illness, physical condition, or psychological condition that has rendered him unable to work full-time.
8. Since 9/10/2021, the claimant has not faced any circumstances that have rendered him unavailable for full-time work.
9. Since 9/10/2021, the claimant has performed at least three work search activities in each week. The claimant has searched for CDL driver jobs.

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.

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-quoted 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. *See* Findings of Fact ## 7 and 9. Only his availability for work is at issue, as it has been affected by his enrollment in a CDL training program at a Massachusetts school.

The review examiner found that the claimant was not available for full-time work while attending school between June 7, 2021, and September 9, 2021. *See* Finding of Fact # 6. He concluded that, because the claimant had not met the availability requirement under G.L. c. 151A, § 24(b), he was not eligible for benefits between June 6, 2021, and September 11, 2021. We disagree with the review examiner's decision to deny benefits to the claimant during all of the weeks in which he was 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 July 12, 2021, and August 12, 2021. A person in an approved training program pursuant to G.L. c. 151A, § 30(c), is deemed to be available for work under G.L. c. 151A, § 24(b). G.L. c. 151A, § 24(c). The availability for work requirement is waived. 430 CMR 9.01.

In light of the approval of the claimant's G.L. c. 151A, § 30(c), benefits, we conclude as a matter of law that the claimant cannot be disqualified from receiving benefits under G.L. c. 151A, § 24(b), during the period for which he has been approved under G.L. c. 151A, § 30(c), the weeks ending July 17, 2021, through August 14, 2021. However, the claimant remains ineligible for benefits between the weeks ending June 12, 2021, and July 10, 2021, and between the weeks ending August 21, 2021, and September 11, 2021, because he was not approved for training benefits during those weeks, and he was not available for full-time work due to his enrollment in school.

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 June 12, 2021, and July 10, 2021, and between the weeks ending August 21, 2021, and September 11, 2021. However, we reverse that part of the decision which denied benefits to the claimant between the weeks ending July 17, 2021, and August 14, 2021. The claimant is entitled to benefits during this period, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 23, 2021



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