

**Where the record shows that the claimant remained capable of, available for, and actively seeking full-time work while enrolled in a full-time online bachelor's degree program, held she met the requirements to be eligible for benefits under G.L. c. 151A, § 24(b), during all weeks that she certified for benefits under her 2021-02 claim.**

**Board of Review  
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**Issue ID: 0073 6359 23**

### 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 filed a claim for unemployment benefits with the DUA, effective October 24, 2021 (2021-02 claim), which was denied in a determination issued on January 20, 2022. The claimant 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 12, 2023. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not available for full-time work, and, thus, she 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 for additional evidence pertaining to the claimant's availability for work. Following an additional hearing, 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 original decision, which concluded that the claimant was disqualified because she was not available for full-time work while in school, 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 benefits on October 29, 2021. The effective date of the claim was October 24, 2021.
2. Prior to applying for benefits, the claimant worked part-time as an assembler.

3. From fall of 2020 until April 2022, the claimant worked from 7 a.m. until 3 p.m. She was attending an online program for her bachelor's degree and was able to do her schoolwork in the evening. Her school schedule was flexible and had no set schedule. She spent about two to three hours in the evening doing her coursework. During this time, the claimant looked for full-time work.
4. Since October 24, 2021, the claimant has been in a school or training program. She was attending school online and working full-time at [Employer A] from 3 p.m. until 11 p.m. There has not been a time when the claimant was not in school or a training program.
5. For the period beginning October 24, 2021, the claimant had no medical issues that affected her ability to work.
6. Between November of 2021 and January 2022, the claimant resumed part-time employment as an assembler.
7. Between April 2022 and August 2022, the claimant worked part-time as a caregiver.
8. From fall 2022 to May 2, 2023, while enrolled in a program to obtain her teaching license and employed part-time at a HeadStart program, the claimant attended online classes. Her training program, spanning twenty-five hours per week, was from 8:30 a.m. to 1 p.m., Monday through Friday. During this period, the claimant was not available for full-time employment.
9. From September 2022 until June 30, 2023, the claimant worked part-time as a teacher for a head start program in Massachusetts.
10. From fall 2022 until May 2, 2023, the claimant was sponsored by her job to get her teacher's license. She worked part-time while in the program.
11. On June 30, 2023, the claimant was laid off from her teaching job for the summer months. She had a return-to-work date of August 28, 2023. During this time, the claimant did not look for full-time work since she knew she would be going back to work.

#### Credibility Assessment:

The claimant's testimony during the initial and remand hearings displayed inconsistencies. While initially expressing doubts about her ability to work full-time while enrolled in the teaching program, the claimant's clarity improved during the remand hearing, particularly regarding the timeline of events between her schooling and employment. It was evident from both hearings that she had previously managed full-time employment while attending school online. However, discrepancies arose regarding her job search efforts following the June 30, 2023, layoff. In the initial hearing, she stated a reluctance to seek alternate

employment due to the impending return to work on August 28, 2023. Conversely, during the remand hearing, she claimed to have actively pursued employment three days a week while on layoff. Additionally, the claimant's witness attested that she was unaware of the requirement to seek employment during this period. While the claimant has demonstrated her capability to balance work and online schooling, she has not substantiated her job search efforts during the layoff period.

### 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. After such review, the Board adopts the review examiner's Consolidated Findings ## 1–6 and deems them to be supported by substantial and credible evidence, except as follows. The portion of Consolidated Finding # 3, which states that the claimant worked from 7:00 a.m. to 3:00 p.m. from the fall of 2020, through April, 2022, is overly broad, as Consolidated Finding # 4 provides that, during some of that time, the claimant worked different hours. We need not consider the remainder of the consolidated findings, portions of which are vague as to dates, because they address time periods that are immaterial to our decision. 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 disagree with the review examiner's legal conclusion to disqualify the claimant during the weeks that she seeks benefits under her 2021-02 claim.

The review examiner's decision denied benefits beginning with the claim effective date, October 24, 2021, and indefinitely. Since the claimant only requested benefits for eight weeks under this claim, the week ending October 31, 2021, and the weeks ending January 22 through March 5, 2022, we have limited our decision to that time period.

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 . . . .

To be eligible for benefits, a claimant must be available for full-time work.<sup>1</sup>

The review examiner's findings indicate that because of the claimant's flexible online school schedule, she was available for full-time work for the period that includes the beginning of her claim, October 24, 2021, through April, 2022. Indeed, for a portion of that time, she was working full-time while also working on her bachelor's degree. *See* Consolidated Findings ## 3 and 4.

When read together, Consolidated Findings ## 3 and 4 imply that the claimant was in school and working two full-time jobs at the same time. During the hearing, however, the claimant explained

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<sup>1</sup> See G.L. c. 151A, §§ 1(r)(1) and (2), 29(a) and (b), which reflect the Legislature's expectation that an unemployed worker will only be eligible for benefits if she is unable to obtain full-time work.

that, while in school, she was initially working for one employer during the day shift, lost that job and filed for benefits, until she found a new full-time job working the 3:00 p.m. to 11:00 p.m. shift. She further testified that she sought benefits only during weeks in which she was not working, including the short period between these two jobs and again when laid off from the new employer.<sup>2</sup>

The consolidated findings are sparse as to the period between January 16 and March 5, 2022, during which the claimant requested seven weeks of benefits. However, DUA records show reported wages of only \$464.74 for the claimant during the first quarter of 2022. This supports the claimant's testimony about her employment history during this time period. *See also* Consolidated Finding # 6.

Inasmuch as Consolidated Finding # 5 states that the claimant had no medical issues that prevented her from working, we are satisfied that she was capable of working full-time during this time. Further, Consolidated Finding # 3 indicates that she was also actively looking for full-time work.

We, therefore, conclude as a matter of law that the claimant has met her burden to show that she was capable of, available for, and actively seeking full-time work while in school during the period October 24, 2021, through March 5, 2022, as required under G.L. c. 151A, § 24(b).

In accord with our decision, an end date of March 5, 2022, will be placed on the G.L. c. 151A, § 24(b), issue before us. The DUA will be asked to investigate the claimant's eligibility under this same section of law for benefits claimed under her 2023-01 unemployment claim, effective June 18, 2023, which includes the period following her layoff for the summer from her teaching job.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the period October 24, 2021, through March 5, 2022, if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - May 31, 2024**



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)**

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<sup>2</sup> 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).

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](http://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