

**The claimant bus driver is entitled to benefits where he has met the requirements of G.L. c. 151A, § 24(b), during the week in which he was laid off from work due to a school break. He need not demonstrate his eligibility under § 24(b), during weeks in which he was employed full-time.**

**Board of Review  
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**Issue ID: 0076 0697 59**

### 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 on March 13, 2022. On April 13, 2022, the agency issued a determination denying benefits, and he 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 and denied benefits in a decision rendered on July 9, 2022. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was neither available for, nor actively searching for, work and, thus, 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 the claimant was ineligible for benefits under G.L. c. 151A, § 24(b), on the grounds that he was not available for, nor actively seeking, work, is supported by substantial and credible evidence and is free from error of law, during weeks in which the claimant remained employed full-time.

### Findings of Fact

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

1. The claimant submitted an application for [sic] with the Department of Unemployment Assistance (DUA) for Unemployment Insurance (UI), with an effective date of March 13, 2022.
2. The claimant works two jobs.
3. The claimant is a full-time seasonal school bus driver during the regular school year for a local city Monday through Friday.

4. The claimant is not employed as a full-time school bus driver during summer vacation or when school is on break.
5. The claimant works a second job Saturday and Sunday year-round.
6. Since March 27, 2022, and continuing thereafter, the claimant has not been restricted either physically, mentally or emotionally in their ability to perform work.
7. During the week of March 27, 2022, through April 2, 2022, the claimant was not available for work because they were already working full-time.
8. During the week of April 3, 2022, through April 9, 2022, the claimant was available for work from Monday through Friday because the school was on break during that week.
9. During the week April 17, 2022, through April 23, 2022, the claimant was not available for work because they were already working full-time.
10. During the week of March 27, 2022, through April 2, 2022, the claimant was not actively seeking work because they were already employed.
11. During the week of April 3, 2022, through April 9, 2022, the claimant was not actively seeking work.
12. During the week of April 17, 2022, through April 23, 2022, the claimant was not actively seeking work because they were already employed.
13. During the week of March 27, 2022, through April 2, 2022, the claimant self-certified that they were available for work and capable of working. The claimant also self-certified that they completed three work search activities. No work search activities were submitted.
14. During the week of April 3, 2022, through April 9, 2022, the claimant self-certified that they were available for work and capable of working. The claimant also self-certified that they completed three work search activities. No work search activities were submitted.
15. During the week of April 17, 2022, through April 23, 2022, the claimant self-certified that they were available for work and capable of working. The claimant also self-certified that they completed three work search activities. No work search activities were submitted.
16. On April 13, 2022, the DUA issued the claimant a Notice of Disqualification for the period between March 27, 2022, through March 11, 2023. The claimant appealed the Disqualification.

## 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 pursuant to G.L. c. 151A, § 24(b).

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 review examiner denied benefits to the claimant during nearly the entirety of the benefit year on his 2022 claim, reasoning that the claimant was neither available for work nor actively searching for work because he was already employed full-time. During the hearing, however, the review examiner inquired only as to the claimant's availability and work search activities during the weeks from March 27 through April 23, 2022. Given this lack of evidence, we decline to affirm any disqualification pursuant to G.L. c. 151A, § 24(b), beyond April 23, 2022.

As an initial matter, we note that whether a claimant meets the requirements of G.L. c. 151A, § 24(b), is a question reserved for claimants who are not working full-time.<sup>1</sup> If claimants are working full-time, it follows that they are capable of working and available for work and there is no need for them to search for work.<sup>2</sup>

Here, we need only decide whether the claimant has met the requirements of G.L. c. 151A, § 24(b), during the weeks in which he was not working full-time. The claimant's capability is not at issue, as the review examiner found that there were no physical, mental, or emotional issues preventing the claimant from working. *See* Finding of Fact # 6. With respect to a claimant's availability and work search activities during weeks in which he was not working full-time, our analysis will vary depending on the number of weeks of layoff or, in this case, school break.

During any layoff that is four weeks or less and has a return-to-work date within the four weeks, the claimant is not required to search for work and may restrict his or her availability to one employer. *See* DUA Adjudication Handbook, Chapter 4, § 3(B)(9). Accordingly, the claimant is not disqualified from the receipt of benefits under G.L. c. 151A, § 24(b), during the week in April

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<sup>1</sup> We note that, here, we are referring to wage-earning claimants who are not working full-time for an employer. The issue of eligibility under G.L. c. 151A, § 24(b), is an appropriate inquiry for any claimant seeking unemployment benefits who is engaged in full-time or part-time self-employment activities.

<sup>2</sup> *See* G.L. c. 151A, §§ 29 and 1(r), which imposes upon claimants who are partially or totally unemployed the obligation to be capable of, available for, and to seek suitable work.

that he was laid off and did not search for work, as he was scheduled to return to work at the end of that one-week school break.<sup>3</sup>

We, therefore, conclude as a matter of law that the claimant may not be disqualified pursuant to G.L. c. 151A, § 24(b), during the weeks beginning March 27, 2022, through April 23, 2022.

Because the findings indicate that the claimant was not fully employed during the summer break in which his bus driver services were not being performed, we have asked the DUA to investigate whether the claimant is eligible for benefits pursuant to G.L. c. 151A, §§ 29 and 1(r), during that period.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the period from March 27, 2022, through April 23, 2022, if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - November 29, 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](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.

SVL/rh

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<sup>3</sup> Further, Finding of Fact # 8 provides that he was available for work during this week.