

The claimant was in school full-time, working part-time, and was providing childcare for her daughter. Based upon the evidence in the record, the review examiner reasonably concluded that the claimant was not capable of, or available for, full-time work. She is disqualified pursuant to G.L. c. 151A, § 24(b).

**Board of Review
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Issue ID: 0076 2925 70

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 affirm.

The claimant filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on April 21, 2022. 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 and denied benefits 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 was not capable of, available for, and actively seeking suitable work and, thus, 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 to issue subsidiary findings of fact pertaining to the claimant's availability for work and work search activities. Thereafter, the review examiner issued his 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 decision, which concluded that the claimant was not available for full-time work because she attends a full-time academic program and did not meet the work search requirements because she was limiting her work-search to jobs for which she did not yet have the requisite qualifications, 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 opened a claim for benefits with an effective date of 4/10/2022.

2. The claimant has been collecting unemployment benefits since the COVID-19 pandemic of 2020.
3. The claimant's employer hired her as a full-time insurance agent. Her working hours are 25 to 30 hours a week. She is paid exclusively on a commission basis.
4. At the time she filed her claim, the claimant was working for her employer at an insurance company and continued to work selling life and long-term care insurance and fixed annuities full-time 25 to 30 hours a week.
5. The claimant's current insurance employer is, as required by the professional licensing association, sponsoring her series 6, series 63 and series 7 financial industry designation classes and her opportunity to sit for the respective exams.
6. The claimant has a daughter who was born on 2/20/2017 and has no childcare on Tuesdays and Fridays.
7. The claimant cannot work on Tuesdays and Fridays because she needs to care for her child.
8. On 1/3/2022, the claimant entered a full-time graduate degree program at a New Hampshire University with an anticipated graduation date of 4/9/2023.
9. The claimant attends classes and studies between 40 to 50 hours a week.
10. On the claimant's telephone factfinding, she answered that she attends an online program for full-time students every day including weekends for minimum of 4 hours a day and that includes weekends.
11. On the claimant's telephone factfinding, she answered that she worked with her most recent employer 40 hours a week and while attending school she is now available to work only 25 hours a week.
12. On the claimant's continued claim summary, she indicated that she is seeking jobs within the financial industry. "Many of them require you to be fully licensed with your securities (6/63/7) and or CFP [Certified Financial Planner]. I am currently studying for these licenses, on LinkedIn, Indeed, ZipRecruiter.
13. On 4/21/2022, the claimant was issued a Notice of Disqualification (the Notice) informing her that she is not entitled to receive benefits for the period beginning 4/10/2022 and for an indefinite period thereafter until you meet the requirements of the Law.
14. The claimant appealed the Notice stating, "I am available to work full time. My master's program is online and primarily done after regular work hours and on the weekends."

Credibility Assessment:

The claimant's testimony regarding her availability to immediately accept a full-time job if offered is not creditable. While attending school, the claimant is available to work only 25 hours a week excluding Tuesdays and Fridays when she has childcare obligations. She testified during the hearing that she is unemployed and currently working 25-30 hours a week as a sales agent for an insurance company. Her employer is sponsoring (as required by the professional licensing association) her efforts to study for and sit for some of the required tests to become a CFP which require her to pass her series 6, series 63 and series 7 financial industry certifications. As of 1/3/2022, she is also attending graduate school and studies 40 to 50 hours a week primarily on weekends and after her workday when her child goes to bed. The claimant asserted that she would be able to work full time but admits that it would be extremely difficult to take a full-time job while her focus is on childcare, obtaining her financial credentials, and her graduate school commitments. It is unreasonable that the claimant would be able to work a full-time job, the hours she is working for her current employer, attending full time school, provide childcare to her children two days a week, and studying for her professional tests. As such, the claimant's testimony that she is available to immediately accept full time employment is not credible.

The claimant's testimony that she is able to complete her academic work after normal working hours and on the weekends is uncredible [sic] because her testimony as a whole was inconsistent and uncredible [sic]. The claimant testified that she is currently unemployed, but then contradicts her own testimony by asserting that she is currently working full time 25 to 30 hours a week while collecting unemployment benefits. The claimant also provided testimony that she is attending graduate school classes between 40 to 50 hours a week mostly on weekends and after her work hours

The claimant's testimony about her job searching activity for jobs for which she is qualified for is not credible. The claimant provided testimony that she has been working for the same insurance company since 2019 and "loves" her job. Also, her employer is sponsoring her for the professional designation tests that will allow her to get a job as a CFP that she is not yet qualified for and for which jobs she seeks. The claimant admits that she loves her job in the financial industry as a financial advisor and insurance agent and aspires to continue working as a CFP when she becomes qualified and gets her financial industry designations and completes her graduate degree program. It is unreasonable that the claimant will leave her current employment given her love for it and that they are sponsoring her designation exams prior to receiving the designations for a job that will not provide her the ability to sit for these designation exams.

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 original 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 further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented. As discussed more fully below, we believe that the review examiner's consolidated findings of fact support the conclusion that the claimant was not available for work within the meaning of the law.

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

Under this section of the law, the claimant bears the burden of proving that she is able to work, available for work, and actively seeking suitable employment. Although not specifically stated in G.L. c. 151A, § 24(b), other provisions of the Massachusetts Unemployment Statute show that unemployment benefits are intended to assist claimants seek and return to *full-time* work. *See, e.g.,* G.L. c. 151A, §§ 29 and 1(r), which provide for the payment of benefits only to those who are unable to secure a full-time weekly schedule of work.

The review examiner rejected as not credible the claimant's testimony that she was available for full-time work while attending school full-time, studying for professional licensing examinations, working as an insurance agent, and providing childcare for her daughter. *See* Consolidated Findings ## 3, 5, and 6–10. In doing so, he relied on fact-finding questionnaires submitted by the claimant and her testimony about her other professional, academic, and personal obligations. Such assessments are within the scope of the fact finder's role, and, unless they are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. *See School Committee of Brockton v. Massachusetts Commission Against Discrimination*, 423 Mass. 7, 15 (1996). Upon review of the record, we have accepted the review examiner's credibility assessment as being supported by a reasonable view of the evidence.

Because of her other obligations, the claimant is only available for part-time work. *See* Consolidated Findings ## 4 and 11. There is insufficient evidence in the record to show that she had good cause for limiting her availability to part time work within the meaning of 430 CMR 4.45.

We, therefore, conclude as a matter of law that the claimant is not capable of, available for, or actively seeking work in accordance with the provisions of G.L. c. 151A, § 24(b).

The review examiner's decision is affirmed. The claimant is denied benefits from the week of April 10, 2022, and for subsequent weeks, until such time as she meets the requirements of the law.



BOSTON, MASSACHUSETTS
DATE OF DECISION - September 28, 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.

LSW/rh