

**The claimant is exempt from the G.L. c. 151A, § 24(b) availability and work search requirements while approved for benefits under G.L. c. 151A, § 30(c). He is denied benefits during the weeks in which he is not approved under § 30, and for which he is not available for full-time work, as required by § 24(b).**

**Board of Review  
19 Staniford St., 4<sup>th</sup> Floor  
Boston, MA 02114  
Phone: 617-626-6400  
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.  
Chairman  
Charlene A. Stawicki, Esq.  
Member  
Michael J. Albano  
Member**

**Issue ID: 0077 2912 90**

### 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 May 22, 2022. On June 22, 2022, the DUA issued a determination stating that the claimant was ineligible for benefits under G.L. c. 151A, § 24(b). 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 July 22, 2022. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant did not meet the availability and work search requirements of G.L. c. 151A, § 24(b), and, thus, was disqualified. After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we accepted the case for review. 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 did not meet the availability and work search requirements of G.L. c. 151A, § 24(b), as of June 12, 2022, is supported by substantial and credible evidence and is free from error of law, where the DUA's UI Online System shows that the claimant was approved for unemployment training benefits between July 19, 2022, and September 26, 2022.

### Findings of Fact

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

1. The claimant filed a claim for unemployment insurance (UI) benefits with an effective date of May 22, 2022.
2. Prior to applying for benefits, the claimant was last employed as a full-time manager at a plastics and rubber manufacturer which moved to Ohio.

3. On June 6, 2022, the claimant commenced a vocational training course at a trade school.
4. The claimant attends the training course for three days a week for a total of 22 hours each week. The course runs from June 6, 2022, until September 26, 2022.
5. The claimant did not submit a Training Opportunities Program (TOP) prior to attending the course.
6. The claimant applied for one part-time position during the week beginning July 3, 2022, but otherwise did not look for or seek any other employment while claiming UI benefits.
7. On June 22, 2022, DUA sent a Notice of Disqualification to the claimant indicating that he was disqualified for receiving benefits for the week beginning June 12, 2022, because he is in attendance at a full-time educational program and has not demonstrated a prior history of both studying and working full-time.

### 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, the claimant's capability is not at issue, as there is no indication in the record that he has not met this requirement while claiming benefits. Only his availability and work search efforts are at issue, as these have been affected by his enrollment in a vocational training course between June 6, 2022, and September 26, 2022. *See Findings of Fact # 3–4.*

The review examiner concluded that the claimant was not available for work after finding that the claimant had only applied for one part-time position while claiming benefits. *See Finding of Fact # 6.* He further concluded that, because the claimant had not met the availability and work search

requirements under G.L. c. 151A, § 24(b), he was not eligible for any benefits as of June 12, 2022. We disagree.

We note that the information contained in the DUA's electronic record-keeping system, UI Online, shows that, approximately two weeks after the review examiner's decision was rendered, the claimant was approved for unemployment training benefits under G.L. c. 151A, § 30(c), between July 19, 2022, and September 26, 2022. Approval for benefits under G.L. c. 151A, § 30(c), results in a waiver of the availability and work search requirements of G.L. c. 151A, § 24(b). 430 CMR 9.01.

In light of the approval of the claimant's G.L. c. 151A, § 30, 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 23, 2022, through September 24, 2022. However, the claimant remains ineligible for benefits between the weeks ending June 18, 2022, and July 16, 2022, because he was not approved for training benefits during those weeks, and he was limiting his availability and not actively seeking work due to his enrollment in the training program.

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 18, 2022, and July 16, 2022. We reverse that part of the decision which denied benefits to the claimant beginning the week ending July 23, 2022. He is entitled to benefits as of the week ending July 23, 2022, and for subsequent weeks, if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - September 19, 2022**



Paul T. Fitzgerald, Esq.  
Chairman



Michael J. Albano  
Member

Member Charlene A. Stawicki, 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](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