

The claimant was not required to be available for, or actively seek, full-time work while enrolled in a digital marketing training program, because she was approved for benefits under G.L. c. 151A, § 30(c). The claimant is eligible for benefits during the week at issue pursuant to G.L. c. 151A, §§ 24(b), (c), and 430 CMR 9.01.

**Board of Review
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Issue ID: 0079 1080 33

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 November 7, 2021, which was initially approved. However, in a determination issued on February 9, 2023, the agency disqualified the claimant for the week beginning January 15, 2023. 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 February 28, 2023. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was attending a full-time training program and was neither available for, nor searching for, work during the week at issue, and thus she was disqualified from receiving benefits pursuant to 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 obtain additional evidence about the claimant's attendance at school and eligibility for benefits under G.L. c. 151A, § 30(c). The claimant attended the remand hearing, and, 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 is ineligible for unemployment benefits pursuant to G.L. c. 151A, § 24(b), while attending a full-time training program, is supported by substantial and credible evidence and is free from error of law, where the claimant has been approved for extended benefits under G.L. c. 151A, § 30(c).

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 benefits with an effective date of November 7, 2021.
2. Prior to filing for benefits, the claimant worked full-time as a chemist.
3. The claimant obtained an application for training benefits (the first application) to attend a digital marketing program (the program) at [University]. The claimant completed her portion of the first application on August 28, 2022. On September 6, 2022, an Associate Director from [University] completed the provider portion of the first application for the program to begin on September 12, 2022 and end on September 12, 2023.
4. The claimant submitted the first application to the Department of Unemployment Assistance (DUA) on or shortly after September 6, 2022.
5. For unknown reasons, the claimant experienced problems coordinating the DUA paperwork with the [University] requirements.
6. The claimant obtained another application for training benefits (the second application) to attend the program at [University]. The claimant completed her portion of the second application on October 19, 2022. On October 20, 2022, the Associate Director from [University] completed the provider's portion of the second application for the program to begin on November 7, 2022 and end on September 7, 2023.
7. The claimant submitted the second application by email on October 20, 2022.
8. On November 7, 2022, [University] emailed the claimant welcoming her to the program. The official program start date and end dates were 11/7/2022 and 11/7/2023, respectively. The email informed the claimant to allow 1-2 business days to receive a second set of log-in credentials via email from her instructors.
9. On November 7, 2022, the claimant began the program. As of April 6, 2023 (the remand hearing date), the claimant expects to complete the program on November 7, 2023.
10. The claimant does not have transcripts for the program.
11. During the week commencing January 15, 2023 through January 21, 2023, the claimant had no medical or physical issues that prevented her from working full-time.
12. During the week commencing January 15, 2023 through January 21, 2023, the claimant was not available for full-time work because she was attending the program.

13. During the week commencing January 15, 2023 through January 21, 2023, the claimant was not looking for full-time work at least three times because she was enrolled in the program.
14. On February 9, 2023, the DUA sent the claimant a Notice of Disqualification stating she was disqualified from receiving unemployment benefits from the period beginning January 15, 2023 and ending January 21, 2023, because she did not meet the requirements of Section 24(b).
15. The DUA approved the second application for training benefits in a hearing decision dated March 15, 2023.

Credibility Assessment:

Throughout the hearing, the claimant was confused as the specific dates and the approval process for the program. This confusion does not detract from her overall credibility given the claimant had supporting and corroborating documentation. The first application entered into the record as a remand exhibit provided details for the original dates sought for the training benefits. The March 15, 2023, hearing decision provided details of the second application. Although the claimant did not have transcripts from [University], the claimant provided email correspondence dated November 7, 2022, outlining the official program start date and end date (November 7, 2022 and November 7, 2023, respectively) which were consistent with the March 15, 2023 hearings decision. The March 15, 2023, hearing decision corroborated the claimant's testimony about obtaining approval for the training benefits and attending the program.

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. 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. However, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant is ineligible for benefits.

The review examiner denied benefits pursuant to 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. . . .

The review examiner found that during the week beginning January 15, 2023, the claimant was attending a digital marketing training program. *See Consolidated Findings ## 3, 8, and 9.* Further,

the review examiner found that, during this week, the claimant was neither available for full-time work nor actively seeking full-time work, because she was enrolled in this training program. Consolidated Findings ## 12 and 13. On this basis, the review examiner concluded that the claimant did not meet the requirements of G.L. c. 151A, § 24(b), during the week at issue.

However, shortly after issuing the decision in the present case, the claimant was approved for extended benefits while participating in an approved training program pursuant to G.L. c. 151A, § 30(c) (section 30 training benefits). *See* Consolidated Finding # 15. A different review examiner had rendered a decision on March 15, 2023, approving section 30 training benefits for the period from November 7, 2022, through November 7, 2023. *See* Consolidated Finding # 15.¹ Given these new findings, we must consider G.L. c. 151A, § 24(c), which provides, in relevant part:

An individual who is certified as attending an industrial retraining course or other vocational training course as provided under section thirty shall be deemed to available for work under clause (b).

Also relevant is the DUA regulation at 430 CMR 9.01, which states, in relevant part:

M.G.L. c. 151A, §§ 24 and 25(c) pertaining to work search, availability for work, and acceptance of suitable work, are waived if a claimant is otherwise eligible for [unemployment benefits] and is enrolled in approved training.

Pursuant to these provisions, the claimant was not required to be available for, or actively seek, full-time work, because she was enrolled in an approved section 30 training program during the week beginning January 15, 2023.

We, therefore, conclude as a matter of law that the claimant is eligible for benefits pursuant to G.L. c. 151A, §§ 24(b), 24(c), and 430 CMR 9.01.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning January 15, 2023, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 25, 2023



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano did not participate in this decision.

¹ *See* DUA Issue ID # 0078 4555 66.

**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.

AB/rh