

Board held that the claimant, who left her prior job due to lack of childcare, meets the availability requirement of G.L. c. 151A, § 24(b), when she was available for work 35 hours per week.

**Board of Review
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Issue ID: 0079 5642 73

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 the DUA, effective March 19, 2023, which was denied in a determination issued on April 19, 2023. 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 May 16, 2023. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not available for 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 afforded the claimant an opportunity to submit written reasons for agreeing or disagreeing with the decision. The claimant responded. 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, is supported by substantial and credible evidence and is free from error of law, where the review examiner found that the claimant was available for work between 9:00 a.m. and 4:00 p.m., while her children were in school.

Findings of Fact

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

1. The claimant opened an unemployment claim having an effective date of 3/19/23.
2. The claimant was employed for a clothing manufacturer until 3/20/23. The claimant worked the overnight shift.

3. The claimant's husband took care of their children while the claimant worked. In the beginning of February 2023, the claimant's husband became ill and could no longer take care of the children.
4. The claimant's mother provided childcare beginning in February 2023. In March 2023, the claimant's mother became ill and could no longer provide childcare
5. The claimant tried to find childcare but was unable to get anyone for the overnight hours. The claimant asked her employer if she could move to the day shift, but no hours were available.
6. The claimant quit her job on 3/20/23, because she had no childcare.
7. The claimant is available to work from 9 a.m. to 4 p.m. while her children are in school. Their school year ends on June 22, 2023. The claimant is available to work only if she is able to secure childcare.
8. The claimant has two injured discs in her back. This is a long-standing issue and does not prevent the claimant from working.
9. The claimant has been able to work full-time since the week beginning 3/19/23.
10. The claimant has not been available to work full-time beginning the week beginning 3/19/23.
11. The claimant has engaged in an active search for full-time or part-time employment since filing her claim.
12. On 4/19/23, the DUA issued a Notice of Disqualification to the claimant determining the claimant did not meet the availability requirements of the Law and, therefore, was disqualified for the week beginning 3/19/23 and indefinitely thereafter.
13. The claimant appealed that Notice.

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 conclusion is free from error of law. After such review, the Board adopts the review examiner's findings of fact except as follows. We set aside Finding of Fact # 10, which states that the claimant has not been available to work full-time since the week beginning March 19, 2023, as Finding of Fact # 7 states that the claimant is available to work from 9:00 a.m. to 4:00 p.m., while her children are in school. In adopting the remaining findings, we deem 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 was not available for work during her entire claim.

The review examiner denied the claimant 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

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 in seeking and returning 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. Thus, a claimant must generally be capable of, available for, and actively seeking full-time work while requesting unemployment benefits.

The review examiner found that the claimant has been capable of working and actively searching for work since the start of her claim, March 19, 2023. *See* Findings of Fact ## 9 and 11. We agree with these findings, as they are supported by the substantial evidence in the record. However, we disagree with the review examiner's conclusion that the claimant has not been available for full-time work as of the start of her claim.

The review examiner found that the claimant is available for work between 9:00 a.m. and 4:00 p.m. while her children are in school. *See* Finding of Fact # 7. Based on this finding, the review examiner concluded that the claimant's availability while her children are in school amounts to less than full-time availability. The Board has previously noted that what is considered full or part-time work in any given sector is dependent upon a number of factors. *See* Board of Review Decision 0032 4899 92 (June 17, 2020). Whether a job is full-time depends upon what is considered full-time in the occupation or by the employer. *See* 430 CMR 4.75. Working 35 hours per week (seven hours per day, five days per week) while her children are in school can very well be considered full-time availability across a range of industries.

Finally, we note that, even if the claimant's 35-hour availability is not considered full-time availability, she would still meet the availability requirements under G.L. c. 151A, § 24(b), and the unemployment regulations. Under 430 CMR 4.45(1)(b), claimants who have left their employment for an urgent, compelling, and necessitous reason may limit their availability to part-time during the benefit year if their availability is reduced due to the same reason that caused them to leave employment. Here, the review examiner found that the claimant left her overnight employment on March 20, 2023, due to a lack of childcare during the overnight hours. *See* Findings of Fact ## 2 through 6. The Supreme Judicial Court has held that child-care demands may constitute urgent, compelling, and necessitous circumstances. Manias v. Dir. of Division of Employment Security, 388 Mass. 201, 204 (1983) (citations omitted). As previously noted, the claimant's reason for limiting her availability to the hours of 9:00 a.m. to 4:00 p.m. during the week was due to a lack of childcare outside of those hours. Thus, pursuant to 430 CMR 4.45(1)(b), the claimant may reduce her availability for work to part-time during the benefit year and this will not affect her eligibility for benefits.

The review examiner further found that, when the school year ended on June 22, 2023, the claimant would only be available for work if she was able to secure childcare. *See* Finding of Fact # 7. There is nothing in the record to show that she obtained childcare to enable her to work while the children were out of school for the summer. Since she has not shown that she was available for full or part-time work during the summer, she has not met her burden to show that she was available for work between June 22, 2023, and when her children would have returned to school in the fall.

We, therefore, conclude as a matter of law that the claimant met the able, available, and actively seeking work requirements of G.L. c. 151A, § 24(b), during the periods that her children were in school.

The review examiner's decision is affirmed in part and reversed in part. The claimant is entitled to receive benefits for the week beginning March 19, 2023, through June 24, 2023, and from the week beginning September 3, 2023, and for subsequent weeks if otherwise eligible. The claimant is not eligible for benefits during the period from June 25, 2023, through September 2, 2023.

BOSTON, MASSACHUSETTS
DATE OF DECISION - June 26, 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)**

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.