

While approved for training benefits under G.L. c. 151A, § 30(c), the claimant is eligible for benefits, as he is exempt from the G.L. c. 151A, § 24(b), availability and work search requirements. He is denied benefits during the weeks in which he is not approved under § 30(c), because he did not show that he was available for full-time work.

**Board of Review
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Issue ID: 0080 0448 42

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 April 30, 2023, which was denied in a determination issued on May 20, 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 June 16, 2023. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant did not meet the availability requirement of G.L. c. 151A, § 24(b), and, thus, was disqualified. 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 did not meet the availability requirement of G.L. c. 151A, § 24(b), 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 May 20, 2023, and October 6, 2023.

Findings of Fact

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

1. The claimant's appeal is from a determination which denied him benefits under Section 24(b) of the Law for the week beginning 4/30/23 and thereafter.
2. The claimant was attending a full-time course at NETTS for his CDL. He began the course on 5/8/23. He attends school Monday through Friday from 5 p.m. to 10 p.m. The program runs until 10/9/23.

3. The claimant is not available for full-time work. He cares for his 2-year-old son Monday through Sunday, 7 a.m. to 4:30 p.m. each week.
4. The claimant applied for Section 30. His application is pending.
5. The claimant is searching for work online 3 times a week. He is searching for warehouse and cashier positions.

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 not eligible for benefits during all the weeks of his 2023-01 claim.

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

Although not specifically stated in G.L. c. 151A, § 24(b), other provisions of the Massachusetts Unemployment statute establish that unemployment benefits are intended to assist claimants in finding 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, 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. Further, the claimant has been actively searching for work three times per week. Finding of Fact # 5. Only his availability is at issue, as this has been affected by his childcare responsibilities and his enrollment in a training program between May 8, 2023, and October 9, 2023. Findings of Fact ## 2–3.

The review examiner concluded that the claimant was not available for work as of the start of his claim on April 30, 2023, based on his childcare responsibilities and enrollment in the training program. She further concluded that, because the claimant had not met the availability requirement under G.L. c. 151A, § 24(b), and his application for unemployment training benefits under G.L. c. 151A, § 30(c), was still pending at the time of her decision, he was not eligible for any benefits as of April 30, 2023. Finding of Fact # 4. While the review examiner's conclusion was correct based on the information available to her at the time that her decision was issued, we disagree with her decision based on the information currently available in the DUA's electronic record-keeping system, UI Online.

We note that the information contained in the UI Online system shows that approximately one month after the review examiner's decision was rendered, the claimant was approved for unemployment training benefits pursuant to G.L. c. 151A, § 30(c), between May 20, 2023, and October 6, 2023. 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 is not 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 May 27, 2023, through October 7, 2023. However, the claimant remains ineligible for benefits between the weeks ending May 6, 2023, and May 20, 2023, because he was not approved for training benefits during those weeks, and he was limiting his availability for work due to his enrollment in the training program, as well as his childcare responsibilities. The claimant is also ineligible for benefits as of the week ending October 14, 2023, and indefinitely thereafter, as he has not shown that, after he finished his training program, he was available for full work while caring for his two-year-old child every day of the week between 7:00 a.m. and 4:30 p.m.¹

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 May 6, 2023, and May 20, 2023, and as of the week ending October 14, 2023. We reverse that part of the decision which denied benefits to the claimant between the weeks ending May 27, 2023, and October 7, 2023; he is entitled to benefits during these weeks, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - June 28, 2024



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

¹ We note that, under certain circumstances outlined in 430 CMR 4.45, claimants may remain eligible for benefits while limiting their availability to part-time. The claimant here has not shown that he meets the requirements of 430 CMR 4.45.

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