Because the claimant's F-1 student nonimmigrant status authorized her to work only 20 hours per week while school was in session, she met the full-time availability requirement of G.L. c. 151A, § 24(b), only when school was not in session.

Board of Review
100 Cambridge Street, Suite 400
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874

Issue ID: 0080 2573 67

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 May 14, 2023, which was denied in a determination issued on May 27, 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 July 13, 2024. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant did not establish that she was legally permitted to work in the United States during her benefit year, and, thus, she was not entitled to benefits under G.L. c. 151A, § 24(b). 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's F-1 nonimmigrant status did not grant her the type of authorization to work that met the requirements of G.L. c. 151A, § 24(b), is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant filed a new claim for unemployment insurance benefits effective 5/14/2023.

2. The claimant's most recent I-94 shows that she was, [sic] the claimant was admitted to the United States of America (USA) on 12/31/2016 on an F-1 student visa.

3. From 10/25/2022 through 2/24/2023, the claimant worked full-time as a Request For Proposal (RFP) writer.

4. On 6/15/2023, the claimant's I-20, Certificate of Eligibility for Nonimmigrant Student Status, was approved.

5. The claimant's major is Business Administration and Management, and her program start and end date is 4/3/2023 through 4/3/2024.

6. The claimant has a return to work date of 7/5/2023 and an end date of 3/24/2024.

7. The claimant's F-1 visa status only allows her to work for the listed employer on her I-20.

8. From 5/15/2023 and the subsequent weeks, the claimant was not legally authorized to work.

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 reject Finding of Fact # 7, inasmuch as it states the claimant's F-1 visa status work authorization is limited to just the listed employer, as explained below. We also decline to accept Finding of Fact # 8 because it is a mixed question of fact and law, which at this point in the proceedings is for the Board to decide. *See* Dir. of Division of Employment Security v. Fingerman, 378 Mass. 461, 463–464 (1979) ("Application of law to fact has long been a matter entrusted to the informed judgment of the board of review."). In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. Further, as discussed more fully below, we reject the conclusion that the claimant has failed to meet her burden to show her availability to work during all weeks during the benefit year.

The review examiner denied benefits after concluding the claimant had not established that she was legally available for work in the United States. In reaching this conclusion, the review examiner applied the state law provision 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 . . . .

As a state agency administering the unemployment insurance program, we must also abide by U.S. Department of Labor (DOL) regulations governing eligibility for unemployment insurance. These regulations require that a non-citizen must be legally authorized to work by the appropriate U.S. agency in order to be considered "available for work." Specifically, 20 C.F.R. § 604.5 — Application — availability for work, provides, in relevant part, as follows:

> (f) Alien status. To be considered available for work in the United States for a week, the alien must be legally authorized to work that week in the United States by the appropriate agency of the United States government. In determining whether an alien is legally authorized to work in the United States, the State must follow the requirements of section 1137(d) of the SSA (42 U.S.C. 1320b-7(d)), which relate to verification of and determination of an alien's status.

Thus, a claimant who certifies that she is not a citizen of the United States must verify her identity and show that she has been legally authorized to work during the benefit year of her claim by the appropriate U.S. agency. This is currently the U.S. Citizenship and Immigration Services (USCIS) under the Department of Homeland Security (DHS).

Exhibit 9 is the claimant's USCIS Form I-20, Certificate of Eligibility for Nonimmigrant Student Status. This document shows that the claimant is admitted to the United States under an F-1 student immigration classification. It authorizes her to work for a specific employer from July 5, 2023, to March 24, 2024, and, by virtue of her F-1 status, permits her to work for other employers with certain limitations.[1] Those limitations are set forth in detail under 8 C.F.R. § 214.2(f).

Specifically, 8 C.F.R. § 214.2(f)(9)(i) allows on-campus employment, and the student can work off-campus if the employment is associated with the curriculum, the student is in good academic standing, and provided the student gets written permission from the school. A student may engage in other temporary employment (optional practical training) directly related to her area of study with express authorization from the USCIS. 8 C.F.R. § 214.2(f)(10)(ii). However, these regulations also provide that such employment is limited to 20 hours per week while school is in session. *See* 8 C.F.R. §§ 214.2(f)(9)(i),(ii), and (10)(ii)(A)(2).

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 be available for full-time work while requesting unemployment benefits. Inasmuch as the above federal regulations pertaining to the claimant's immigration status prohibit her from working more than 20 hours per week while school is in session, she cannot meet the full-time availability requirement for unemployment benefits when school is in session.

Although Finding of Fact # 5 provides that the claimant's school program runs from April 3, 2022, through April 3, 2024, it is evident from other parts of the record that there are periods when school is not in session. Specifically, Exhibit 9 states that her current session dates were from April 3 to June 18, 2023. This means that the claimant could not be available for full-time work from the effective date of her claim, May 14, 2023, through June 18, 2023, and she is not eligible for benefits during these weeks.

[1] While not explicitly incorporated into the review examiner's findings, the content of Exhibit 9 is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. *See* Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

In her Board of Review appeal, the claim asks for benefits only from May 14 to July 2, 2023, at which point she states that she returned to work. The DUA's electronic record-keeping system, UI Online, shows that she certified for benefits only during these seven weeks. After her school session ended on June 18, 2023, and before her employment began on July 3, 2023, she was authorized to work pursuant to the USCIS Form I-20 (Exhibit 9). This period includes two of the weeks that the claimant certified for benefits.

We, therefore, conclude as a matter of law that the claimant has met her burden to show that the USCIS has authorized her to work full-time in the United States, as required pursuant to G.L. c. 151A, § 24(b), during the weeks claimed when her school was not in session.

The review examiner's decision is affirmed in part and reversed in part. The claimant is denied benefits for the weeks during the period from May 14 to June 17, 2023, as well as beginning July 2, 2023, and for subsequent weeks. The claimant is entitled to benefits for weeks during the period from June 18 to July 1, 2023, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - June 28, 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.

AB/rh