

**The Board awarded benefits because the claimant demonstrated that he met the availability requirements under G.L. c. 151A, § 24(b), as he had a history of working full-time while attending school, was consistently available to work full-time hours, and he tailored his part-time school schedule around his work schedule.**

**Board of Review  
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**Issue ID: 0080 4613 38**

### 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, which was denied in a determination issued on June 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 modified the agency's initial determination, which resulted in the partial denial of benefits in a decision rendered on September 2, 2023. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not available for full-time work beginning August 20, 2023, 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 remanded the case to the review examiner to take additional evidence about the claimant's ability to work full-time while attending an online course of study. The claimant attended the remand hearing. Thereafter, the review examiner issued her 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 was not available for full-time work, is supported by substantial and credible evidence and is free from error of law, in light of consolidated findings which now provide that the claimant has a history of working full-time while attending school and has tailored his school schedule around work.

### 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 new claim for unemployment benefits, effective 6/4/2023.

2. Prior to filing the claim for benefits, the claimant worked full-time as an information systems and technology director for a healthcare center.
3. The claimant has not worked since filing for benefits.
4. The claimant is enrolled in a part-time, Bachelor of Science degree in cyber security (Program) at a university, which he began in 2020. The claimant attends the Program online. The Program is a go-at-your-own-pace program.
5. Each semester is ten weeks long. The claimant is given a list of classes in which he may enroll during a given semester and he chooses how many or how few classes he will take during each ten-week semester. Each class is worth one credit. The claimant typically enrolls in 3 to 6 credits for each semester.
6. The claimant spends approximately 5 to 10 hours each week on course work and the majority of his work is completed on the weekends.
7. The claimant had been working full-time while attending the Program until he was laid off on 6/4/2023.
8. Beginning 6/4/2023 and for the weeks thereafter, the claimant was physically and mentally capable of working a full-time job.
9. On 6/18/2023, the claimant experienced a family emergency and had to leave the county [sic]. The claimant did not return to the U.S. until 6/28/2023.
10. The claimant's grade report indicates that, from 1/4/2023 to 3/14/2023, the claimant was enrolled in 3 credit hours, from 3/22/2023 to 5/30/2023, the claimant was enrolled in 6 credit hours, from 6/7/2023 to 8/15/2023, the claimant was enrolled in 6 credit hours.
11. During the period beginning 8/23/2023 and ending 10/31/2023, the claimant's grade report, which is dated 8/30/2023, shows a total of 18 courses with a status of "scheduled" next to each course.
12. The claimant's grade report, dated 9/2/2023, shows all 18 courses; however, only one course status is outlined as "current" and the remaining 17 courses are outlined as "scheduled."
13. The claimant is enrolled in one, one credit course, for the 8/23/2023 through 10/31/2023 semester. The claimant enrolled in only one course for the current semester as he is dedicating most of his time to searching for employment, finding health insurance, and seeking all eligible government assistance programs.
14. Beginning 6/4/2023 and for the weeks thereafter, the claimant was searching for full-time supervisor and management of information systems positions

between three and six times each week by utilizing online job search engines or reaching out to potential employers directly, the [claimant] also worked with headhunters. The claimant kept a detailed work search log.

15. As of 8/20/2023, the claimant has been available for full-time employment. Since 2020, the claimant has worked a full-time position and has tailored his school schedule around his work schedule. The claimant is available to work forty plus hours per week.

#### Credibility Assessment:

During the remand hearing, the claimant provided forthcoming testimony that he has been attending his school program since 2020 and that he held a full-time position up until 6/4/2023. The claimant further testified that he typically enrolls in three to six credits during each ten-week semester. Currently, the claimant is enrolled in one, one credit course, for the 8/23/2023 through 10/31/2023 semester. The claimant enrolled in only one course for the current semester as he is dedicating most of his time to searching for employment, finding health insurance, and seeking all eligible government assistance programs. The claimant provided an updated grade report which indicated that the claimant was enrolled in only one course during this current semester. Although the initial grade report dated 8/29/2023, showed 18 classes for the 8/23/2023 through 10/31/2023 semester, the claimant testified that that was the list of courses the claimant was to choose from, and not the list of courses in which he was enrolled. In addition, the claimant's testimony regarding the courses in which he is currently enrolled is corroborated by the updated grade reported dated 9/2/2023. As the claimant's testimony regarding these matters was forthcoming and reasonable, it is accepted as credible, and findings of fact were made accordingly.

#### 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 original conclusion is free from error of law. After such review, the Board adopts the review examiner's consolidated findings of fact, except where that portion of Consolidated Finding # 9 indicates the claimant left the country. The record shows the claimant left to go to Puerto Rico, which is part of the United States. In adopting the remaining findings, we deem 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, while we agree with the review examiner's original legal conclusion concerning the June 4, 2023, through August 19, 2023, timeframe, we disagree with her conclusion that the claimant was not available to work full-time as of August 20, 2023.

At issue in this case is the claimant's availability for employment pursuant to G.L. c. 151A, § 24(b), which provides, in relevant 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. . . .

To be eligible for benefits, a claimant must be available for full-time work.<sup>1</sup>

In her original decision, the review examiner concluded that the claimant did not meet the availability requirement of G.L. c. 151A, § 24(b), beginning August 20, 2023, because she did not accept the claimant's explanation that he would only be enrolled in courses on a part-time basis for the August 23, 2023, through October 31, 2023, semester as credible.<sup>2</sup> The review examiner also concluded that the claimant was ineligible for benefits from June 18, 2023, through June 28, 2023, which, according to the record, was when the claimant was addressing a family emergency in Puerto Rico. Because the claimant did not dispute this disqualification in his Board appeal, and it is supported by the record, it is not at issue here.

However, after remand, the review examiner found that the claimant was available to work full-time as of August 20, 2023, because he is available to work more than 40 hours per week. Consolidated Finding # 15. The review examiner also found that the claimant has worked in a full-time position while attending school since 2020, and that he has tailored his school schedule around his work schedule, especially where the majority of his coursework is completed on the weekends. Consolidated Findings ## 2, 4–7, and 15.

Given these consolidated findings, we conclude as a matter of law that the claimant was available for full-time work within the meaning of G.L. c. 151A, § 24(b), as of August 20, 2023.

We note that the claimant's ability to work and work-search efforts are not at issue in this decision, as the totality of the record indicates that he has met these requirements within the meaning of G.L. c. 151A, § 24(b).

The review examiner's decision is affirmed in part and reversed in part. The Board affirms that portion of the hearing decision that disqualified the claimant from receiving benefits from the week beginning June 18, 2023, through July 1, 2023, and that awarded benefits from June 4, 2023, through June 17, 2023, and from July 2, 2023, through August 19, 2023. However, the portion of the hearing decision that disqualified the claimant beginning August 20, 2023, is reversed. The claimant is entitled to receive benefits from August 20, 2023, and for subsequent weeks, if otherwise eligible.

**N.B.** We note that a separate availability issue, Issue ID: 0081 0503 30, is associated with the claimant's claim and appears in the agency's UI Online record-keeping database. This issue has a start date of August 20, 2023, and an agency note indicates that the issue was created on September

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<sup>1</sup> See G.L. c. 151A, §§ 1(r)(1) and (2), 29(a) and (b), which reflect the Legislature's expectation that an unemployed worker will only be eligible for benefits if he is unable to obtain full-time work.

<sup>2</sup> We note that, since the claimant was not enrolled in courses totaling at least 12 credits, he is not generally considered to be in school full-time during the period at issue. However, he must still demonstrate his availability for full-time work because he is enrolled in school part-time. See DUA Adjudication Handbook, ch. 4, section 3, paragraph 17 (Mar. 1, 2020).

1, 2023, “in reference” to the instant hearing decision issued on September 2, 2023. Agency notes also indicate that an ensuing Notice of Disqualification was issued on September 2, 2023. The Board will ask the DUA to investigate this matter and request that this issue be nullified in accordance with this decision.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - January 9, 2024**



Charlene A. Stawicki, Esq.  
Member



Michael J. Albano  
Member

Chairman Paul T. Fitzgerald, 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.

JMO/rh