The claimant established he was available for full-time work while he was attending school during certain hours of the week. He is eligible for benefits under G.L. c. 151A, § 24(b).

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Issue ID: 0082 0597 07

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 separated from his position with the employer and filed an unemployment claim with an effective date of January 21, 2024. In a determination issued on February 23, 2024, the DUA denied his claim. 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 April 10, 2024. 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 and, thus, was disqualified 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 was not available for full-time work while he was in school 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 effective date of the claim is January 21, 2024.

2. The claimant last worked full-time as a cellular tower technician from which he separated, to attend trade school Monday through Thursday afternoons.

3. The claimant has been enrolled in the electrical trade school since 2022. The class schedule is September through June, Monday to Thursday 4:30 p.m. to 7:30 p.m.

4. The claimant needs to leave work by 3:00 p.m. daily to arrive at his school in a timely manner.

5. The claimant is seeking full-time electrical apprentice employment that will allow him to continue his education and accrue the required apprenticeship hours to obtain a license.

6. The claimant is not willing to quit his electrical trade school to accept full-time employment.

7. The claimant has no medical issues preventing him from working.

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 # 6, because it is not supported by the record. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. As discussed more fully below, we also reject the review examiner's legal conclusion that the claimant was ineligible for benefits.

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 . . . .

We note at the outset that the claimant bears the burden of proof of establishing he meets the requirements of G.L. c. 151A, § 24(b). *See* Evancho v. Dir. of Division of Employment Security, 375 Mass. 280, 282–283 (1978) ("the burden rests on the unemployed person to show that his continued unemployment is not due to his own lack of diligence") (citation omitted).

In this case, the issue is whether the claimant was available for full-time work while attending school. Prior to filing for benefits, the claimant worked full-time as a cell-tower technician. Finding of Fact # 2. He worked as an apprentice from 6:00 a.m. until 4:00 p.m. or 5:00 p.m.[1] While he worked full-time, the claimant attended an electrical trade school four days per week for three hours, Monday through Thursday from 4:30 p.m. until 7:30 p.m. *See* Finding of Fact # 3. On days when the claimant had school, he would leave work at 3:00 p.m. to arrive to his evening classes on time. Finding of Fact # 4. This means that, on the days the claimant left work early to go to school, he was still working a nine-hour day. Thus, even though the claimant was leaving his workday early to attend school, he was available for full-time work.

[1]While not explicitly incorporated into the review examiner's findings, this part of the claimant's testimony 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).

The review examiner found that the claimant was not willing to quit school to work full-time. Finding of Fact # 6. As noted above, we reject this finding because it is inconsistent with the record before us. At the hearing, the claimant testified that he was willing to leave school if he was offered full-time employment.[2] Given these facts, the claimant has demonstrated that he is available for full-time work while attending school.

We, therefore, conclude as a matter of law that the claimant has met his burden of showing that he was available for work full-time work, as required under G.L. c. 151A, § 24(b).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning January 21, 2024, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 30, 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.

MR/rh

[2] This part of the claimant's testimony is also part of the unchallenged evidence introduced at the hearing and placed in the record, and therefore properly referred to in our decision today. Bleich, *supra* at 40.