

Claimant demonstrated that she was capable of, available for, and actively seeking full-time work in her field as a personal care aide during evenings and weekends, when she was not in CNA school. Held she is eligible for benefits pursuant to G.L. c. 151A, § 24(b).

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

**Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member
Michael J. Albano
Member**

Issue ID: 0082 8072 91

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 employment and filed a claim for unemployment benefits with the DUA, effective March 31, 2024, which was initially approved. However, in a determination issued on May 22, 2024, the DUA denied benefits from the beginning of her claim through May 4, 2024. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, the review examiner modified the agency's initial determination and denied benefits through May 11, 2024, in a decision rendered on June 29, 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, she 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 attending her CNA training program, 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 March 31, 2024.
2. The claimant last worked full-time as a direct care worker from which she resigned her position on or about March 16, 2024, due to needing to concentrate on her full-time CNA schooling.

3. The claimant enrolled in a full-time (twenty hours per week) certified nursing assistant program beginning March 18, 2024, and ending May 9, 2024. The classes are Monday to Thursday from 9 a.m. to 2:30 p.m.
4. The claimant requested unemployment benefits for the weeks of March 31, 2024, through May 18, 2024.
5. The claimant submitted completed Work Search Logs for each week benefits were requested.
6. The claimant was limiting her search to evening hours and weekends, to allow for enough time to manage school and study time.
7. The claimant is not willing to quit school to accept full-time employment.
8. The claimant does not have any medical issues or physical impediments affecting her ability 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 the portion of Finding of Fact # 2, which states that the claimant resigned from her direct-care position on or about March 16, 2024, to concentrate on her CNA schooling, as well as all of Finding of Fact # 7, as they are unsupported by the record. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant is ineligible for benefits.

The review examiner denied 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 seek and return 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.

There's no question that the claimant enrolled in a CNA training program from March 18 to May 9, 2024, and that she attended classes for that program Monday through Thursday from 9:00 a.m. until 2:30 p.m. Finding of Fact # 3. During the hearing, the review examiner asked the claimant about her availability to work around this school schedule, and the claimant consistently testified that she was available to work full-time during the evening and night-time when she was not in

school.¹ Inasmuch as the work she performed was as a personal care assistant, we can reasonably infer that there was a demand for such work during those hours. Full-time work was certainly feasible, as she was only in school 22.5 hours a week.

In the conclusion and reasoning portion of the review examiner's decision, the review examiner states that the claimant did not establish that she had a history of going to school full-time and working full-time. Such assessments are within the scope of the fact finder's role, and, unless they are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. *See School Committee of Brockton v. Massachusetts Commission Against Discrimination*, 423 Mass. 7, 15 (1996). Specifically, the review examiner states that the claimant could not provide significant details to demonstrate that she had such a history. We disagree. During the hearing, the claimant testified that, in 2010, she attended the [Name A] Hair School in [City A], Massachusetts during the hours of 9:00 a.m. through 3:30 p.m., and that, while attending school, she performed PCA work from 5:00 through 11:30 p.m. and on weekends, naming both the employer and the client. Given the specificity of this testimony, we reject the review examiner's assessment as unreasonable in relation to the evidence presented.

We also reject Finding of Fact # 7, which states that the claimant was not willing to quit school to accept full-time employment, because the review examiner never even asked the claimant about this. Thus, there is no evidence to support this finding.²

Moreover, the record shows that the claimant had no restrictions on her ability to perform work, and that she was actively searching for full-time jobs. *See Findings of Fact ## 5 and 8.* She testified that she was looking for any work that she could find, both full-time and part-time.

We, therefore, conclude as a matter of law that the claimant has demonstrated that she was able, available for, and actively seeking full-time work, as required by G.L. c. 151A, § 24(b).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the period beginning March 31, 2024, and for subsequent weeks if otherwise eligible.

¹ While not explicitly incorporated into the review examiner's findings, this part of the claimant's testimony, as well as the portion discussion below, 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).

² Although the reason the claimant separated from her last job is not material to our decision, we further note that Finding of Fact # 2 also fails to accurately reflect the evidence in the record. The claimant did not testify that she quit her position to concentrate on her CNA program. Rather, in undisputed testimony, she explained that her PCA client stopped employing her because MassHealth objected to the overtime hours.

BOSTON, MASSACHUSETTS
DATE OF DECISION - November 27, 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

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