The claimant, a citizen of Bolivia, resided in the United States on a F1 Student Visa. Upon completion of her degree, USCIS granted her temporary employment authorization to work in optional practical training (OPT) in an area directly related to her major STEM field of study. Because new employers have ten days after the commencement of employment to file Form I-983, the Board held that she was authorized to work and is eligible to receive benefits under 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: 334-FHJ4-2RN3

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 filed a claim for unemployment benefits with the DUA, effective August 11, 2024, which was denied in a determination issued on January 4, 2025. 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 2, 2025. 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 is 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, as well as DUA's electronic record keeping system, EMT.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant's F-1 STEM OPT (Optional Practical Training) work authorization and lack of a new E-Verified employer meant that she was no longer authorized to work after June 24, 2024, and, thus, that she did not meet 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 was born in Bolivia. The claimant is not a United States citizen.

2. The claimant has a Form I-20 (F-1 Academic and Language) for the school [College A] with a program start date of August 2019 and a program end date of May 21, 2022.

3. The claimant attended [College A] in [City A], Massachusetts from August 23, 2019, until May 21, 2022. After May 21, 2022, the claimant was no longer in any type of training program.

4. The claimant has a U.S. Employment Authorization card valid from May 23, 2022, through May 22, 2023, category C03B indicating "Terms and Conditions Stu: Post-Completion Opt".

5. The claimant has a new US Employment Authorization card valid from May 23, 2023, through May 22, 2025, category C03C indicating "Terms and Conditions Stu: Stem Opt E-Verify Empl".

6. The claimant has a limited term Massachusetts Driver's license issued on July 13, 2023, with an expiration date of May 22, 2025.

7. The claimant has a Social Security Card indicating "valid for work only with DHS Authorization." Her social security number is [xxx-xx-xxxx].

8. The claimant has an I-20 indicating Class of Admission F-1, Academic and Language, employment authorization type CPT, with the employer information listed as [Employer A] with the dates of August 16, 2021, through December 11, 2021, and December 12, 2021, through May 2022.

9. The claimant has an I-20 indicating Class of Admission F-1, Academic and Language, employment authorization type Post-Completion OPT, with the employer information listed as [Employer A] with the dates of May 23, 2022, through May 22, 2023.

10. The claimant has an I-20 indicating Class of Admission F-1, Academic and Language, employment authorization type Stem-OPT, with the employer information listed as [Employer B], Inc., with the dates of May 23, 2023, through June 24, 2024, and [Employer B] LLC with the dates of October 14, 2024, through December 4, 2024.

11. The claimant worked for the employer [Employer A], in [City A], Massachusetts from August 2021 until June 24, 2024. The claimant worked as an Architectural Designer.

12. The claimant had no employment from June 24, 2024, until October 14, 2024.

13. The claimant filed her claim for unemployment benefits on August 16, 2024. The claimant was not enrolled in any educational institute at that time and had no employment.

14. The claimant worked for [Employer B] from October 14, 2024, through December 4, 2024. The claimant had no employment after December 4, 2024.

15. On January 4, 2025, a Notice of Disqualification was issued under Section 24(b) of the Law, indicating "You have not established that you are legally permitted to work in the United States. Therefore you do not meet the requirements pursuant to the Law." "You are not entitled to receive benefits beginning 8/11/2024 and for an indefinite period of time thereafter until you are legally permitted to work in the United States. Important Information Your availability is restrictive because of your visa type." The determination indicates that the claimant was overpaid benefits for the week ending August 24, 2024 through the week ending October 12, 2024. The claimant filed an appeal to that determination.

16. The claimant moved back to Bolivia on January 8, 2025, and plans to remain there indefinitely.

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 # 3 that states that the claimant was no longer in any type of training program after May 21, 2022, as this is unsupported by the evidence. The portion of Finding of Fact # 13 that indicates that the claimant was not enrolled in any educational institute at the time she filed her claim for unemployment benefits on August 16, 2024, is misleading.[1] In adopting the remaining findings, we deem 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 has failed to show her authorization to work during the weeks requested.

At issue is the claimant's eligibility pursuant to the state law provision under G.L. c. 151A, § 24(b), which provides, in pertinent part, as follows:

[1] The three school-issued I-20 Certificates of Eligibility for Nonimmigrant Status show that the claimant is legally residing in the U.S. under an F-1 student visa, and, although the claimant had completed her classroom course work and received a master's degree in architectural and building, she continued to be enrolled in the school's post-completion training programs (CPT, OPT, and STEM OPT) during the period beginning August 16, 2021, through May 22, 2025. The claimant's degree and continued attendance in Boston Architectural College's post-graduate training programs, referenced in the I-20 Certificates of Eligibility for Nonimmigrant Status issued by the school's designated school official (DSO) on December 8, 2021, June 16, 2022, and December 11, 2024, respectively, are Exhibits ## 12 and 13. While those portions of the I-20 Certificate are not explicitly incorporated into the review examiner's findings, they are part of the unchallenged evidence introduced at the hearing and placed in the record, and they are 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).

> 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 programs, 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, in order to determine that the claimant was available for work under G.L. c. 151A, § 24(b), the claimant must show that, during her benefit year, she was legally authorized to work by the appropriate U.S. agency, currently the U.S. Citizenship and Immigration Services (USCIS) under the Department of Homeland Security (DHS).

In this case, we have confined our analysis to the period in which the claimant seeks unemployment benefits, the weeks beginning August 11, 2024, through October 12, 2024, and the week of December 8, 2024.

In August of 2019, the claimant, a citizen of Bolivia, was approved for an F-1 Visa to complete her master's degree at a college in the United States. *See* Findings of Fact ## 1 and 2. Although the claimant completed her program degree, she sought to continue her F-1 student status and was approved for post-completion optional practical training (OPT) for the period May 23, 2022, until May 22, 2023. Subsequently, she was approved for STEM OPT training in her degree of study, which had to be in science, technology, engineering, or mathematics (STEM), for the period beginning May 23, 2023, and ending on May 22, 2025.[2] *See* Findings of Fact ## 3, and 8–10.

The DHS regulation at 8 C.F.R. § 214.2, provides, in relevant part, as follows:

> (f)(10)(ii)(A) Consistent with the application and approval process in paragraph (f)(11) of this section, *a student may apply to USCIS for authorization for temporary employment for optional practical training directly related to the student's major area of study. The student may not begin optional practical training until the date indicated on his or her employment authorization document, Form I-766.* A student may be granted authorization to engage in temporary employment for optional practical training . . .

[2] The claimant's employment authorization periods for OPT and STEM OPT training as shown on her I-20 Certificates of Eligibility for Nonimmigrant Status are also part of the unchallenged evidence in the record.

> (3) After completion of the course of study, or, for a student in a bachelor's, master's, or doctoral degree program, after completion of all course requirements for the degree (excluding thesis or equivalent). . . .

(Emphasis added.)

Furthermore, 8 C.F.R. § 214.2(f)(10)(ii)(C) lists all the requirements that must be met to work as a STEM OPT student including specific employer requirements. The relevant portions are as follows:

> (5) Employer qualification. The student's employer is enrolled in E-Verify, … and the employer remains a participant in good standing with E-Verify, as determined by USCIS. An employer must also have an employer identification number (EIN) used for tax purposes.
>
> (6) Employer reporting. A student may not be authorized for employment with an employer pursuant to paragraph (f)(10)(ii)(C)(2) of this section unless the employer agrees, by signing the Training Plan for STEM OPT Students, Form I-983 or successor form, if the termination or departure is prior to the end of the authorized period of OPT. Such reporting must be made within five business days of the termination or departure . . .
>
> (7) Training Plan for STEM OPT Students, Form I-983 or successor form**.**
>
> > (i) . . . A student must submit the Form I-983 or successor form, which includes a certification of adherence to the training plan completed by an appropriate individual in the employer's organization who has signatory authority for the employer, to the student's DSO, prior to the new DSO recommendation . . .
> >
> > (ii) The training plan described in the Form I-983 or successor form must identify goals for the STEM practical training opportunity, including specific knowledge, skills, or techniques that will be imparted to the student, and explain how those goals will be achieved through the work-based learning opportunity with the employer; describe a performance evaluation process; and describe methods of oversight and supervision. Employers may rely on their otherwise existing training programs or policies to satisfy the requirements relating to performance evaluation and oversight and supervision, as applicable.
> >
> > (iii) The training plan described in the Form I-983 or successor form must explain how the training is directly related to the student's qualifying STEM degree.
> >
> > (iv) If a student initiates a new practical training opportunity with a new employer during his or her 24-month OPT extension, the student must submit, within 10 days of beginning the new practical training opportunity, a new Form

I-983 or successor form to the student's DSO, and subsequently obtain a new DSO recommendation.

(8) Duties, hours, and compensation for training. The terms and conditions of a STEM practical training opportunity . . . including duties, hours, and compensation, must be commensurate with terms and conditions applicable to the employer's similarly situated U.S. workers in the area of employment. A student may not engage in practical training for less than 20 hours per week . . .

(9) Evaluation requirements and Training Plan modifications.

(i) A student may not be authorized for employment with an employer pursuant to paragraph (f)(10)(ii)(C)(2) of this section unless the student submits a self-evaluation of the student's progress toward the training goals described in the Form I-983 or successor form. All required evaluations must be completed prior to the conclusion of a STEM practical training opportunity, and the student and an appropriate individual in the employer's organization must sign each evaluation to attest to its accuracy . . .

(ii) If any material change to or deviation from the training plan described in the Form I-983 or successor form occurs, the student and employer must sign a modified Form I-983 or successor form reflecting the material change(s) or deviation(s) . . . The student and employer must ensure that the modified Form I-983 or successor form is submitted to the student's DSO at the earliest available opportunity.

(10) Additional STEM opportunity obligations**.** A student may only participate in a STEM practical training opportunity in which the employer attests, including by signing the Form I-983 or successor form, that:

(i) The employer has sufficient resources and personnel available and is prepared to provide appropriate training in connection with the specified opportunity at the location(s) specified in the Form I-983 or successor form;

(ii) The student on a STEM OPT extension will not replace a full- or part-time, temporary or permanent U.S. worker; and

(iii) The student's opportunity assists the student in reaching his or her training goals.

Based upon the claimant's I-20 Certificates of Eligibility for Nonimmigrant Status, the claimant graduated from [College A] with a master's degree in architectural and building on May 21, 2022. *See* Findings of Fact ## 1 and 2. USCIS granted the claimant authorization to work in post-completion optional practical training (C03B) and optional practical training based upon her qualifying degree (C03C) beginning May 23, 2022, through May 22, 2025. *See* Findings of Fact ## 4 and 5.

Upon separation from the employer [Employer A], the claimant filed a claim for benefits. *See* Findings of Fact ## 11, 12, and 13. The DUA verified the claimant's employment authorization status through its USCIS Systematic Alien Verification for Entitlements (SAVE) system. The SAVE system response shows that the claimant was authorized to work under category C03B from May 23, 2022, until May 22, 2023, and again under category C03C for the period beginning May 23, 2023, and ending on May 22, 2025.[3] The employment authorization information in the SAVE response is the same information referenced in the claimant's I-20 Certificates of Eligibility for Nonimmigrant Status and is further corroborated by the claimant's USCIS Form I-766 employment authorization documentation (EAD). *See* Findings of Fact ## 4, 5, 9, and 10. Because the claimant was granted entry into the United States on an F-1 Visa and was issued an EAD from USCIS to work in her major area of study, the claimant was legally permitted to be in the United States and authorized to work during that period.

However, the review examiner denied benefits beginning June 24, 2024, based on her reasoning that the claimant did not have authorization to work under her F-1 Visa until such time as the claimant found another employer authorized under the STEM OPT program. We disagree.

There is nothing in the regulations that indicates that an F-1 Visa holder is required to have an E-Verified employer file a petition or Form I-983 on his or her behalf prior to being authorized to work. The claimant had already obtained express USCIS authorization to work as a STEM OPT student. Thus, any subsequent employment pursuant to that authorization is not contingent upon the filing of Form I-983 Training Plan prior to starting work. In fact, new employers have ten days from the commencement of employment to submit Form I-983 to the student's Designated School Official (DSO).[4] This means that there are no further requirements which must be satisfied *prior* to the claimant starting any new STEM OPT employment. It also means that her EAD is not restricted to a specific E-Verified STEM employer.[5] In short, the claimant was free to accept employment from any E-Verified employer within her field of study until May 22, 2025.[6] *See* Finding of Fact # 5.

Although the claimant was authorized to work in the United States, the findings further provide that the claimant returned to Bolivia on January 8, 2025, with no plans to return to the United States. *See* Finding of Fact # 16. Because the claimant returned to her native country for an indefinite duration, we can reasonably infer that she no longer wished to continue with the remainder of her post-completion STEM training. We note that the DUA's EMT system shows that the claimant has not requested weekly benefits or reopened her claim since December 14, 2024.

---

[3] The USCIS SAVE verification response showing the claimant's employment authorization history is Exhibit # 5. This document is also part of the unchallenged evidence in the record.

[4] *See* 8 C.F.R. § 214.2(f)(10)(ii)(C)(7)(iv).

[5] We distinguish this case from Board of Review Decision 0082 5819 02 (Oct. 30, 2024). In that case, the claimant had an H-1B Visa, and, although she was able to reside in the U.S. during the 60-day grace period and seek work during that period, the claimant was not authorized to work until such time as a new employer filed an H-1B petition on her behalf. The restrictions on H-1B Visa holder also limit the holder to working for only one employer.

[6] We have also held that, without evidence to the contrary, an F-1 Visa holder, who limits employment to the holder's major area of study (STEM), is not so limited in employment opportunities that it would essentially remove him or her from the workforce. *See* Board of Review Decision 0081 6250 32 (Jan. 30, 2025).

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.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the period August 11, 2024, through October 12, 2024, and during the week ending December 14, 2024, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - July 15, 2025

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.

DY/rh