

While pursuing a master's degree, the claimant failed to meet her burden to show that for each week she certified for benefits, she was available for or actively seeking full-time work. Therefore, she is ineligible for benefits pursuant to G.L. c. 151A, § 24(b).

**Board of Review
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Issue ID: 334-FHJN-RMNH

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 affirm.

The claimant filed a claim for unemployment benefits with the DUA, effective July 30, 2023. On February 14, 2024, the DUA issued a determination denying benefits indefinitely beginning January 7, 2024. 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 March 30, 2024. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not available for work beginning January 7, 2024, 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 twice remanded the case to the review examiner to obtain additional evidence regarding the claimant's availability for work and her work-search efforts. The claimant attended the remand hearings. 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 eligible for benefits beginning January 7, 2024, because she was enrolled in a master's degree program full-time, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant worked full-time for her latest employer, a pharmaceutical company, as an associate scientist from September 11, 2023, to December 8, 2023.

2. On December 8, 2023, the employer closed permanently.
3. On December 18, 2023, the claimant reopened her UI claim with an effective date of December 10, 2023.
4. In December of 2023, the claimant re-enrolled in graduate school to continue pursuing her master's degree in public health. The master's program is a flexible program for working adults that can be taken either full-time or part-time, as long as the enrolled student completes the program within five years from the date of first enrollment.
5. The claimant's full-time online spring semester classes ran from January 8, 2024 – March 17, 2024, and her in-person (in [City A]) spring semester classes, ran January 16, 2024 – April 29, 2024.
6. The claimant's master's program required her to travel from [City B] to [City A] to attend her in-person classes. The claimant flew to [City A] on Monday mornings to attend her Monday in-person classes, remained in [City A] for her Tuesday online classes, Wednesday in-person classes, and flew back to [City B] either Wednesday night or Thursday mornings. The claimant was also required to be on campus in [City A] for speaking events and conferences related to her educational program.
7. On December 22, 2023, the claimant applied for Section 30 Training Opportunities Program benefits for her attendance at graduate school.
8. The claimant began filing for unemployment benefits the week beginning January 7, 2024, onward.
9. From January 24, 2024, to February 9, 2024, the claimant was on a family vacation out of the country. They flew out on January 24, 2024, and returned on February 9, 2024. The claimant did not look for work while she was on vacation, and she did not request benefits for the time she was away.
10. On January 12, 2024, the claimant's TOP application was denied. The claimant filed an appeal.
11. The claimant certified for benefits for the weeks beginning January 7, 2024, January 14, 2024, February 11, 2024, April 28, 2024, May 26, 2024, June 2, 2024, June 9, 2024, and June 30, 2024.
12. On April 2, 2024, the claimant's TOP application denial determination was affirmed.
13. On or about April 7, 2024, when she received the TOP application appeal results, the claimant dropped her second online class for the Summer Session I, (April 1, 2024 – June 9, 2024).

14. The claimant was enrolled in school the weeks she requested benefits as follows:

1/7/24-1/13/24 – Online (Tues 3 p.m.-9 p.m.)
1/14/24-1/20/24 – In person in D.C. (Wed 6 p.m.-8 p.m.) & Online (Tues 3 p.m.-9 p.m.)
2/11/24-2/17/24 – In person in D.C. (Mon 4 p.m.-9 p.m. & Wed 6 p.m.-8 p.m.) & Online (Tues 3 p.m.-9 p.m.)
4/28/24-5/4/24 –Online (Mon 4 p.m.-9 p.m. & Tues 3 p.m.-7 p.m.)
5/26/24-6/1/24 –Online (Thurs 3 p.m.-9 p.m.)
6/2/24-6/8/24 –Online (Thurs 3 p.m.-9 p.m.)
6/9/24-6/15/24 –Online (Thurs 3 p.m.-9 p.m.)

15. Claimant testified she spent approximately 20 + hours per week on her schooling.

16. The claimant testified that she was not available to work full time while in school full time. The claimant does not believe that her schedule for the weeks that she requested benefits was truly a full-time school schedule.

17. The claimant believes that she could have worked a non-traditional job on the weeks she certified for benefits. Her belief is based on past full-time employment, which were remote positions as well as past jobs in biotech which required flexible schedules such as nights, weekends and four, ten-hour days per week.

18. The claimant's availability for the weeks she requested benefits is as follows:

1/7/24-1/13/24 – Available every day except Tues, 9 a.m.-5 p.m.
1/14/24-1/20/24 – Available Mon, Fri, Sat, Sun, any hours and Thurs remotely.
2/11/24-2/17/24 – Not available to work full time.
4/28/24-5/4/24 – Available Mon, Tue, Wed, Fri, Sat, Sun from 9 a.m.-5 p.m.; Thurs 7 a.m.-3 p.m.
5/26/24-6/1/24 – Available Mon, Tue, Wed, Fri, Sat, Sun from 9 a.m.-5 p.m.; Thurs 7 a.m.-3 p.m.
6/2/24-6/8/24 – Available Mon, Tue, Wed, Fri, Sat, Sun from 9 a.m.-5 p.m.; Thurs 7 a.m.-3 p.m.
6/9/24-6/15/24 – Available Mon, Tue, Wed, Fri, Sat, Sun from 9 a.m.-5 p.m.; Thurs 7 a.m.-3 p.m.

19. On May 9, 2024 (final exam date), the claimant's in-person classes in [City A] ended.

20. September 2, 2024 – December 8, 2024, the claimant is enrolled in a 1 credit Thesis class which is self-paced with deadlines and meetings with advisors which can be scheduled virtually and as needed.

21. January 9, 2025 – March 18, 2025, the claimant is enrolled in her final 1 credit Thesis class which is self-paced with deadlines and meetings with advisors which can be scheduled virtually and as needed.
22. The claimant searched for full-time work for each week she requested benefits. The claimant believed that she applied to the best suited positions, which were not always full-time positions. (see worklogs for each week below).
23. The claimant used online job websites, career fairs, employment coaching, and school contacts/professors to obtain information about open positions. (see worklogs for each week below)

[Work search logs A –G]

Credibility Assessment:

The claimant's credibility was never an issue. The claimant credibly testified at each hearing.

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 conclusion is free from error of law. After such review, the Board adopts the review examiner's consolidated findings of fact except as follows. We reject Consolidated Finding # 22 insofar as it states that the claimant searched for full-time work each week that she requested benefits. This is not supported by the other findings or the record. 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. As discussed more fully below, we agree with the review examiner's legal conclusion that the claimant is ineligible for benefits during the eight weeks in which she certified for benefits.

The review examiner's decision denied benefits indefinitely beginning January 7, 2024.¹ During this period, the claimant only certified for benefits for the weeks beginning January 7, 2024, January 14, 2024, February 11, 2024, April 28, 2024, May 26, 2024, June 2, 2024, June 9, 2024, and June 30, 2024. *See* Consolidated Finding # 11. We have therefore limited our decision to these weeks.

At issue is whether the claimant met the requirements under G.L. c. 151A, § 24(b), which provides, in pertinent part, as follows:

¹ However, DUA records show that an end date of October 19, 2024, has been placed on the disqualification, which appears to have been done to enable the claimant to collect benefits under her new 2024-01 claim, effective October 20, 2024.

[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

Under G.L. c. 151A, § 24(b), the burden of proof is on the claimant. *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).

Although not specifically stated in G.L. c. 151A, § 24(b), other provisions of the Massachusetts Unemployment statute establish that unemployment benefits are intended to assist claimants in finding 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. The DUA expects a claimant to make an active and realistic search for work, taking steps that a reasonable person in the claimant’s circumstances would take if interested in obtaining work. *See* DUA Adjudication Handbook (revised Mar. 1, 2020), chapter 4(A)(1).

In her final consolidated findings of fact, the review examiner did not make any findings regarding the claimant’s capability of working. However, the claimant repeatedly testified that she had not had any physical, mental, or emotional issues that affected her ability to work since January 7, 2024.² She therefore established that she met the requirement to be capable of working full-time during the weeks at issue.

The question remains whether the claimant was available for full-time work and actively seeking full-time work during the weeks she certified for benefits.

In this case, the claimant applied for training benefits pursuant to G.L. 151A, § 30(c). Consolidated Finding # 7. Had this application been approved, the claimant would not have been required to engage in work search activities and would have been deemed available for suitable work during any week she was attending her approved training program. *See* 430 CMR 9.06(2).

However, the claimant’s application was denied. Consolidated Finding # 10. This denial was affirmed after an appeal. Consolidated Finding # 12. Therefore, the claimant was still obliged to be available for full-time work and actively seeking suitable full-time work each week she certified for benefits.

The claimant’s work search log for the week beginning January 7, 2024, has three entries related to full-time jobs. *See* Consolidated Finding # 23. She testified that, during that week, she submitted two job applications and met with a career coach who helped her fix her resume and write cover letters for her job applications. She also testified that the positions were for people who had recently received or were about to receive a Master of Public Health degree. One of these positions would not start until the summer. The other, she thought, would not start until May. By the time that the jobs were due to start, the claimant believed that she would have her degree or

² While not explicitly incorporated into the review examiner’s findings, this testimony and the testimony referred to below are part of the unchallenged evidence introduced at the hearing and placed in the record. They are 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).

would be close enough to finishing it to be qualified for them. Thus, the claimant was applying to jobs for which she was not then qualified. This fails to demonstrate that she was actively seeking suitable work.

The claimant's work search log for the week beginning January 14, 2024, shows that her work search activities for that week concerned a contract position, obtaining help with preparing for interviews, and attending an online seminar. *See Consolidated Finding # 23.* This record does not show that she was actively searching for a full-time position that week.

During the week beginning February 11, 2024, the claimant was not available to work full-time. *See Consolidated Finding # 18.*

Consolidated Finding # 23 shows that, during the week beginning April 28, 2024, the claimant emailed two people about work that was not full-time and attended a job skills program. This does not demonstrate that the claimant was actively seeking full-time employment during this week.

During the weeks beginning May 26, 2024, June 2, 2024, and June 9, 2024, the claimant's work logs show that, aside from one contract position, the claimant only applied for part-time work during these weeks. *See Consolidated Finding # 23.* The claimant testified that, after her TOP appeal was denied, she became focused on obtaining part-time work so that she could have some income. Since the evidence shows that this was part-time work, the claimant did not meet the requirement to be actively seeking full-time work during these weeks.

We note that the review examiner did not make any findings regarding the claimant's availability or work search activities for the week beginning June 30, 2024. However, the claimant's work search log for the week beginning June 30, 2024, also shows that the claimant only sought part-time work during this week.³

In short, during the week beginning February 11, 2024, the claimant has not demonstrated that she was available for full-time work. During the weeks beginning January 7, January 14, April 28, May 26, June 2, June 9, and June 30, 2024, the claimant failed to meet her burden to show that she was actively searching for full-time work.

We, therefore, conclude as a matter of law that the claimant has failed to meet her burden to show that, for each week that she certified for benefits during the relevant period, she met the requirements of G.L. c. 151A, § 24(b), to be capable of, available for, and actively seeking full-time work.

The review examiner's decision is affirmed. The claimant is denied benefits for the period of January 7, 2024, through October 19, 2024, as currently reflected in the DUA's records.

³ *See* the claimant's work search log for the week beginning June 30, 2024. It was marked duplicatively as Remand Exhibit 6 during the second session of the second remand hearing, as the review examiner evidently did not recall that she had marked and entered exhibits during the prior session. This document is also part of the unchallenged evidence in the record.

BOSTON, MASSACHUSETTS
DATE OF DECISION - July 28, 2025



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

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.

REB/rh