

A claimant whose schooling only takes up 10.5 hours per week and who is otherwise available for work, capable of working and actively seeking work, has met the requirements of G.L. c. 151A, § 24(b).

**Board of Review
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**Issue ID: 0015 0186 75
Claimant ID:**

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Sandor Zapolin, 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 an effective date of June 29, 2014. On March 3, 2015, the DUA issued a Notice of Disqualification to the claimant indicating that he was ineligible for benefits between October 5, 2014 and June 27, 2015 because he was enrolled in a full-time educational program and did not have a prior history of both studying and working full-time. 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 to deny benefits in a decision rendered on April 13, 2015. However, the examiner concluded that the claimant was ineligible only between October 5, 2014 and February 27, 2015. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant did not meet the availability requirement of G.L. c. 151A, § 24(b) and, thus, was disqualified. 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 obtain additional testimony and other evidence pertaining to whether or not the claimant was available for work while attending school. The claimant attended the remand hearing. Thereafter, the review examiner issued his consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue on appeal is whether the review examiner's conclusion that the claimant did not meet the availability requirement of G.L. c. 151A, § 24(b), is supported by substantial and credible evidence and is free from error of law, where, after remand, the examiner found that the claimant's school schedule required a maximum of 10.5 hours of the claimant's time per week.

Findings of Fact

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

1. The claimant filed a claim for unemployment benefits on July 2, 2014. The effective date of the claim is June 29, 2014.
2. The claimant attended an online associate's degree program in Information Technology beginning on October 22, 2014 through February 27, 2015, when he took a break from his schooling. The claimant took one 3-credit class every six weeks, the equivalent of 12 credits per traditional academic semester.
3. The claimant does not have a prior history of working full-time while attending school.
4. On March 3, 2015, the Department of Unemployment Assistance sent the claimant a Notice of Disqualification, indicating that the claimant was disqualified from receiving benefits from October 5, 2014 through June 27, 2015, because he was in attendance at a full-time educational program and had not demonstrated a prior history of both studying and working full-time.
5. The claimant was required to attend online class on any three days per week, 3-3.5 hour per day during the period October 11, 2014 through February 28, 2015.
6. The claimant was available for work all day and all night during the period October 11, 2014 through February 28, 2015.
7. The claimant was applying for work as a cashier, fast food worker and manager during the period October 11, 2014 through February 28, 2015.
8. The claimant is qualified for this type of work having work [sic] in this field.
9. Since the claimant had open availability, this type of work was available during the period October 11, 2014 through February 28, 2015.
10. The claimant made at least three work search contacts each week during the period October 11, 2014 through February 28, 2015.

Ruling of the Board

In accordance with our statutory obligation, we review the examiner's decision to determine: (1) whether the findings of fact are supported by substantial and credible evidence; and (2) whether the ultimate conclusion that the claimant is not entitled to benefits is free from error of law. Upon such review and as discussed more fully below, the Board adopts the review examiner's consolidated findings of fact. In adopting these findings, we deem them to be supported by

substantial and credible evidence. However, we reject the review examiner's initial conclusion that the claimant has not met the requirements of G.L. c. 151A, § 24(b).

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

The claimant has the burden to show that he meets each requirement of this statute. There is nothing in the record which indicates that the claimant was not capable of working between the week ending October 11, 2015 and the week ending February 28, 2015, when he took a break from his schooling. In his original decision, the review examiner did not address whether or not the claimant was actively seeking work, but after remand, he found that the claimant made at least three work-search contacts each week. The claimant's work search consisted of jobs for which he was reasonably fitted, such as cashier and manager positions, as he had prior work experience in these positions. In light of the foregoing, we conclude that the claimant's work-search activities satisfy the work-search requirement of the statute.

In his original decision, the review examiner concluded that the claimant was ineligible for benefits because he did not satisfy the availability requirement of G.L. c. 151A, § 24(b), since he found that the claimant was in school full-time and did not have a prior history of working full-time while attending school full-time. After remand, the review examiner found that the claimant's school took up a maximum of 10.5 hours per week during the period at issue, and, therefore, the claimant was available for work each week during the day and nighttime hours. In light of his availability, we conclude that the claimant has met all the requirements of G.L. c. 151A, § 24(b).

We, therefore, conclude as a matter of law that the review examiner's initial decision to deny benefits was not free from error of law, because the claimant has shown through substantial and credible evidence that he was capable of, available for, and actively seeking work between the weeks ending October 11, 2015 and February 28, 2015.

The review examiner's decision is reversed. The claimant is entitled to receive benefits between the weeks ending October 11, 2015 and February 28, 2015, if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION – September 30, 2015



Judith M. Neumann, Esq.
Member

Member Stephen M. Linsky, Esq. did not participate in this decision.

ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS STATE DISTRICT COURT* OR TO THE BOSTON MUNICIPAL 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.

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.

svl/ jv

*** To locate the nearest Massachusetts District Court, see:**
www.mass.gov/courts/court-info/courthouses