

**Although the claimant attends school full-time, she could still be available to work full-time, given her school schedule and the flexible nature of the type of work she performs (home healthcare, personal care attendant, etc.).**

**Board of Review  
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**Issue ID: 0015 4424 19  
Claimant ID:**

## **BOARD OF REVIEW DECISION**

### Introduction and Procedural History of this Appeal

The claimant appeals a decision by Eric Sullivan, a review examiner of the Department of Unemployment Assistance (DUA), to deny unemployment benefits from January 18, 2015 through February 28, 2015. 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, which was determined to be effective December 14, 2014. On February 27, 2015, the agency sent the claimant a Notice of Disqualification, which notified her that she was not entitled to unemployment benefits from January 18, 2015 through February 21, 2015. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by the claimant, the review examiner, in a decision rendered on June 4, 2015, affirmed the agency's determination that the claimant was not eligible for benefits, but modified the end date of the disqualification to be February 28, 2015.

Benefits were denied after the review examiner determined that the claimant did not meet the availability requirements of G.L. c. 151A, § 24(b), and, thus, was disqualified from receiving unemployment benefits under that section of law. 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 take additional evidence regarding the claimant's availability for work and work search. 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 before the Board is whether the review examiner's conclusion that the claimant is not eligible to receive benefits from January 18, 2015 through February 28, 2015, pursuant to G.L. c. 151A, § 24(b), is supported by substantial and credible evidence and is free from error of law, where the review examiner has found that the claimant was attending school full-time, but she was also available to work and searched for suitable work during that period of time.

## Findings of Fact

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

1. The claimant's appeal is from a Notice of Disqualification issued on 2/27/2015 which stated that the claimant was subject to disqualification under Section 24(b) of the Law for the period beginning 1/18/2015 through 2/21/2015. The reasoning provided stated that the claimant was disqualified for being in attendance at a full-time educational program without having a prior history of both studying and attending school full-time.
2. The claimant began attending full-time nursing school on 1/20/2015. The claimant attends classes Tuesday, Wednesday, Thursday and Friday for a total of 21 to 22 hour per week. The claimant spends approximately 28 hours a week performing other course related activities.
3. The claimant attends Mount Wachusett Community College in Gardner, MA which is approximately 30 minutes in commuting distance from her home.
4. The claimant does not have a prior history of both studying and attending school full-time.
5. The fall 2014 semester, the claimant worked full-time employment and attended Mount Wachusett Community College taking one course for a total of 7 credits. During this semester, the claimant worked full-time employment.
6. As of January 20, 2015, the claimant could have changed her class schedule if she was offered fulltime work which conflicted with her classes. The time period to change her classes was not limited in any way.
7. From January 18, 2015 through February 28, 2015, the claimant was available to work all day Mondays, Saturdays and Sundays in addition to evenings on Tuesdays, Wednesdays, Thursdays and Fridays. The claimant did not have any other restrictions which affected her availability for work.
8. From January 18, 2015 through February 28, 2015, the claimant was searching for work as a PCA, Nursing Assistant or Home Health Care Provider.
9. The claimant searched for work using the internet and newspapers. The claimant searched for work Tuesdays, Wednesdays, Thursdays, Fridays, Saturdays and Sundays.
10. The claimant kept only a very little log of her work search activities.
11. The claimant had applied for Section 30 express mailing her application on 1/12/2015. Her application was received by the DUA on 1/14/2015.

12. On 3/4/2015, the claimant was issued A Notice of Approval which granted her a waiver of her work search requirements while attending full-time school.

### Ruling of the Board

In accordance with our statutory obligation, we review 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 ultimate conclusion is free from error of law. Upon such review, the Board adopts the review examiner's consolidated findings of fact and deems 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 is disqualified under 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 she meets each requirement of this statute. There is nothing in the record which indicates that the claimant was not capable of working beginning in January of 2015. In addition, the review examiner made several findings of fact indicating that the claimant was searching for work while she was attending school. She was searching for work on several different days of the week, using several methods to do so, and she was searching for work which was suitable for her, given her healthcare-related work history. Moreover, the type of work she was searching for, such as a personal care attendant, a home healthcare aide, or a nursing assistant, is a type of work which could be available on weekends or at night, when she was available to work. *See Findings of Fact #7 and #8.*

The main issue to be addressed is whether the claimant was available for work as of January 18, 2015. The review examiner originally found that since the claimant does not have a history of working full-time and going to school full-time, she was not available for full-time work. Although a history of working full-time while attending school full-time can be an indication that a person could meet the requirements of G.L. c. 151A, § 24(b) even while in school, we do not think that this is the only way that a person can meet the burden. As we have previously held, attending school full-time does not result in a *per se* disqualification or in a presumption that a person cannot be available for full-time work. *See BR-106530 (June, 2008)*<sup>1</sup>. Each case must be considered individually.

Here, the review examiner found that the claimant attended school for 21 to 22 hours each week beginning the week of January 18, 2015. She also spent 28 hours per week doing school-related activities, such as studying. Although this equals about 50 hours devoted to her schooling, it still leaves large blocks of time when the claimant could have worked a full-time schedule. This includes the weekend or second or third shift during the week. *See Finding of Fact #7.* For

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<sup>1</sup> Board of Review Decision BR0106530 is an unpublished decision, available upon request. For privacy reasons, identifying information is redacted.

example, if the claimant did all of her studying on the weekends plus one day during the week, she could go to school during the week and work in the afternoons or evenings of the other weekdays. Certainly, this would create a hectic schedule for the claimant, but the findings of fact suggest that it was possible to do. The flexible nature of her work also suggests that the claimant could have fit in a full-time schedule of hours around her school-related activities. In light of her availability, we conclude that the claimant has met 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 she was capable of, available for, and actively seeking work from January 18, 2015 through February 28, 2015, despite attending school full-time.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the period from January 18, 2015 through February 28, 2015.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION – September 28, 2015**



Paul T. Fitzgerald, Esq.  
Chairman



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.

SF/jv

**\* To locate the nearest Massachusetts District Court, see:  
[www.mass.gov/courts/court-info/courthouses](http://www.mass.gov/courts/court-info/courthouses)**