

**Although the claimant attends school full-time, she could still be available to work full-time, given her school schedule and the type of work which she is qualified to do.**

**Board of Review  
19 Staniford St., 4<sup>th</sup> Floor  
Boston, MA 02114  
Phone: 617-626-6400  
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.  
Chairman  
Stephen M. Linsky, Esq.  
Member  
Judith M. Neumann, Esq.  
Member**

**Issue ID: 0015 6813 40  
Claimant ID:**

## **BOARD OF REVIEW DECISION**

### Introduction and Procedural History of this Appeal

The claimant appeals a decision by Peter Sliker, 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, and the claim was determined to be effective December 21, 2014. After the claimant began attending a full-time school program, the DUA sent her a Notice of Disqualification, dated April 14, 2015, which notified her that she was not eligible to receive benefits beginning January 25, 2015.<sup>1</sup> 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 June 12, 2015.<sup>2</sup>

Benefits were denied after the review examiner determined that, since the claimant was attending school full-time and had no history of working full-time while attending school full-time, she was not available for and actively seeking work 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 remanded the case to the review examiner to take additional evidence regarding the claimant's availability and work search efforts. A hearing was conducted on July 28, 2015, and the case was returned to the Board with consolidated findings of fact on August 11, 2015. After reviewing the consolidated findings of fact and submissions made by the claimant to the agency, the Board remanded the case again for the taking of additional evidence regarding the claimant's work search. A hearing was conducted on October 7, 2015, and the case was returned to the Board on October 9, 2015, with the review

---

<sup>1</sup> We note that, following the issuance of the April 14, 2015 determination, the agency reviewed the issue in this case and ended the disqualification as of June 20, 2015. The DUA ended the disqualification, because the claimant was approved for training benefits, pursuant to G.L. c. 151A, § 30(c), effective June 23, 2015. *See* Finding of Fact # 14.

<sup>2</sup> The DUA's initial determination denied benefits beginning January 25, 2015. *See* Exhibit # 3. The review examiner denied benefits "for the week beginning February 4, 2015" and thereafter. *See* Remand Exhibit # 1. There is no week beginning February 4, 2015, however. The week which includes February 4, 2015 begins February 1, 2015. It appears that the review examiner may have modified the disqualification to that week, because the claimant began her school program during that week.

examiner's final set of 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 disqualified from receiving benefits, pursuant to the provisions of G.L. c. 151A, § 24(b), is supported by substantial and credible evidence and is free from error of law, where the review examiner's consolidated findings of fact indicate that, although the claimant attended a full-time school program, she also was available to work on the weekends and second shift during the week and she was searching for full-time work.

### Findings of Fact

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

1. From June 2012 until August 29, 2014, the claimant worked as a part-time cashier for a fast-food restaurant.
2. From June 2012 until August 15, 2014, the claimant worked as a part-time aide for a homecare agency.
3. From October 19, 2014, until December 19, 2014, the claimant worked as a full-time customer service representative for a catalogue sales company. She worked Monday through Friday from 9 am to 5 pm.
4. The catalogue sales company had hours available during the evening.
5. The claimant was separated from the catalogue sales company due to a lack of work.
6. The claimant applied for unemployment benefits on December 22, 2014. She was determined to be monetarily eligible with a benefit year beginning December 21, 2014.
7. The claimant was determined to have a weekly benefits rate of \$90.00.
8. On February 4, 2015, the claimant began a full-time medical assistant program at the Salter School. She attends classes Monday through Thursday from 8:30 am to 2:30 pm each week and every third or fourth Friday. She is scheduled to complete her program on October 1, 2015.
9. The claimant was and is available to work between 3 pm and 11 pm during the week. She is available to work weekends. She is available for either customer service work or home health aide work.
10. If the claimant was working she would have time to study before and after class.

11. The claimant's commute to school is five to ten minutes. Her commute does not affect the number of hours she is available to work.
12. At all times the claimant was and is physically able to work.
13. The claimant is actively seeking work. The claimant testified at the hearing that she is looking for work. The record includes a copy of her typed work search log listing contacts by week beginning with the week beginning February 1, 2015, through the week beginning June 28, 2015 (Remand Exhibit 6). The claimant testified at the hearing that she made the work search log from e-mails and a review of her account activity on work related job sites. She testified to specific work search activity including job interviews. The claimant's testimony is found to be credible. It is therefore concluded the claimant is conducting a bona fide work search.
14. On July 4, 2015, the DUA approved the claimant for Section 30 benefits with an effective date of June 23, 2015.

#### 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. As discussed more fully below, we reject the review examiner's legal conclusion that the claimant has failed to show that she meets 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 she meets each requirement of this statute. There is nothing in the record which indicates that the claimant was not capable of working as of February 2015, when she began her school program. *See* Finding of Fact # 12. In addition, the review examiner's consolidated findings of fact now indicate that the claimant was searching for work while she was attending school. She has submitted a lengthy list of businesses at which she applied for work, and the review examiner found her testimony regarding when she applied for work and how she kept track of her applications to be credible. We see no reason to disturb that credibility determination on this record. We note that the claimant searched for a variety of work, and a significant amount was in the health care industry, a field that she is familiar with and that is related to her school program. Although we cannot say that some of the types of work that the claimant searched for would have been available on a full-time basis to someone given her alleged availability of 3:00 p.m. to 11:00 p.m. (for example, bank tellers and receptionists),

there are numerous jobs which could have been available to someone with a second shift and weekend availability (certified nursing assistant, customer service representative, hospital workers, etc.). Therefore, we conclude that the claimant's work search was, as the review examiner noted in Finding of Fact # 13, bona fide and sufficient.

As to the claimant's general availability while she is attending school full-time, 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>3</sup>. Each case must be considered individually.

Here, the review examiner found that the claimant attended school Monday through Thursday from 8:30 a.m. to 2:30 p.m. each week. Thus, she was available for second shift work (3:00 p.m. to 11:00 p.m.), as well as weekend work. The review examiner found that she could study and prepare for her classes, even if she was working full-time and that her commute to school would not affect her ability to work full-time. *See* Findings of Fact # 10 and # 11. Thus, the claimant still had large blocks of time when she could have worked a full-time schedule. The claimant would have had a very busy schedule, but the findings of fact indicate that it was possible for her to work full-time and go to school full-time. Therefore, 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 February 1, 2015, through June 20, 2015, despite attending school full-time during that time.

---

<sup>3</sup> Board of Review Decision BR-106530 is an unpublished decision, available upon request. For privacy reasons, identifying information is redacted.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week period from February 1, 2015 through June 20, 2015.



Paul T. Fitzgerald, Esq.  
Chairman

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - November 10, 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.

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

SF/rh