

**Board of Review
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Issue ID: 0010 9803 91

BOARD OF REVIEW DECISION

0010 9803 91 (July 24, 2014) – A claimant who failed to produce a detailed work search log showing a minimum of three contacts per week, as required by the DUA, did not meet her burden to show that she had been actively seeking work within the meaning of G.L. c. 151A, § 24(b).

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, which was denied in a determination issued on October 4, 2013. 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 January 6, 2014. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not able, available, and actively seeking for full-time 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, this Board held a telephone hearing to obtain additional evidence on the claimant's work search log. The claimant participated in the Board hearing. Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the review examiner's hearing, the review examiner's decision, the claimant's appeal, and the Board hearing.

The issue before the Board is whether the review examiner's conclusion, that the claimant's failure to maintain and provide an adequate work search log precluded a showing that she was able, available, and actively seeking full-time work, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

The Board's consolidated findings of fact, which include those findings adopted from the review examiner's decision in addition to its own findings, are as follows:

1. The claimant sought benefits for the week ending July 27, 2013.

2. The DUA awarded benefits to the claimant for the week ending August 3, 2013 through the week ending August 31, 2013. The claimant received a benefit amount of \$54.00 per week and a dependency allowance of \$27.00 per week. The claimant received total benefits of \$405.00.
3. The Hearings Department subsequently disqualified the claimant for the week ending July 21, 2013 and for an indefinite period of time thereafter under provisions of s. 24(b). The disqualification resulted in an overpayment of unemployment benefits in the amount of \$405.00.
4. The claimant last worked for the employer on May 12, 2013. The claimant worked as a part time cashier at a school. The claimant worked when the school was in session.
5. The claimant has worked part time for this employer since September 2011
6. The claimant works part time, because she has two children an 11 year old and a 3 year old.
7. Since separating from employment, the claimant has looked for work. The claimant applied for seven job positions on unknown dates during June of 2013. The claimant applied for nine job positions on unknown dates during July of 2013.
8. It is unknown how many job positions the claimant applied for after July of 2013.
9. The claimant has had the availability to work.
10. The claimant has had the capability to work.

Ruling of the Board

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 DUA has established that claimants are required to make a minimum of three work-search contacts during each week for which benefits are claimed, and to maintain records of their weekly work-search activities so that this information can be reviewed by DUA staff. *See* Division of Unemployment Assistance Service Rep. Handbook, § 1015(C). The DUA has established that work-search records must include a list of all contacts made, the dates on which contacts occurred, the names, addresses, and phone numbers of any individuals contacted, and the results of each contact. *Id.* The Supreme Judicial Court has upheld such requirements, holding that courts will “give deference to the experience, technical competence, and specialized

knowledge of the [DUA], as well as the discretionary authority conferred upon [the agency]” in setting requirements to determine whether a claimant is actively seeking work. *See Grand v. Dir. of Division of Employment Security*, 393 Mass. 477, 481 (1984) (internal quotations and citations omitted). Indeed, without such detailed records, it would be difficult (if not impossible) for the DUA to verify that claimants were complying with the requirement that they be actively seeking work while collecting unemployment benefits.

Here, following the additional testimony and evidence presented at the Board hearing, we conclude that the claimant has not met her burden of showing that she was actively seeking work.

The claimant testified at the original hearing and at the Board hearing that she kept a work search log, and was aware of the requirement to do so. However, the work search log that the claimant submitted into the record at the Board Hearing contains only nine work-search entries covering July of 2013 without any specific dates, and the claimant was unable to provide specific dates of her July contacts during her testimony. Thus it is impossible to determine when, specifically, the claimant actually conducted her work searches during the month of July. At best, with an average of 4.3 weeks in a month, the claimant has shown that she applied to approximately two jobs per week on average during the month of July, which is below the three-per-week minimum required by DUA policy. Furthermore, the claimant was unable to produce any log of her work searches for any months after July of 2013 and was unable to provide details of her work searches during her testimony. Thus the Board cannot determine what, if any, work search activity the claimant conducted during the months following July, 2013. Under these circumstances, the claimant has been unable to show that she was actively seeking work.

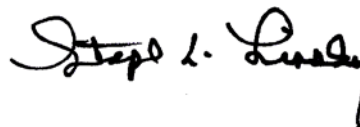
We, therefore, conclude as a matter of law that the claimant was not actively seeking work, within the meaning of G.L. c. 151A, § 24(b).

The review examiner's decision is affirmed. The claimant is denied benefits for the week ending July 21, 2013, and for subsequent weeks, until such time as she has had eight weeks of work and in each of those weeks has earned an amount equivalent to or in excess of her weekly benefit amount. The claimant is overpaid benefits in the amount of \$405.00.

BOSTON, MASSACHUSETTS
DATE OF DECISION - July 24, 2014



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ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS 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.

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.

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