

0012 9990 79 (Feb. 25, 2015) – A claimant, who was temporarily laid off with a definite return-to-work date within four weeks, was not required to actively search for work from other employers.

Board of Review
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Issue ID: 0012 9990 79
Claimant ID: 354329

BOARD OF REVIEW DECISION

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 beginning December 8, 2013. 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 on November 13, 2013. On April 10, 2014, the DUA issued the claimant a Notice of Disqualification informing him that he was not entitled to benefits for the period from December 8, 2013 through March 15, 2014. 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 that the claimant was ineligible for benefits, but made the disqualification indefinite beginning December 8, 2013.

Benefits were denied after the review examiner determined that the claimant was not actively seeking work as of December 8, 2013, and, thus, had not met all requirements set forth in 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 as to how long the claimant had been laid off from his employer and whether he had been told when he was expected to return to work. The claimant attended the remand hearing. 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 conclusion that the claimant did not meet the work search requirement of G.L. c. 151A, § 24(b), is supported by substantial and credible evidence and is free from error of law, where the consolidated findings of fact indicate that the claimant was never laid off with his employer for more than four weeks at a time and he had been told one week after the initial layoff when he was expected to return to work.

Findings of Fact

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

1. On 11/13/13 the claimant filed an initial claim for unemployment benefits. The effective date of this claim is 11/10/13. The claimant's weekly benefit rate on this claim is \$328.00 and the earnings exclusion is \$109.33. (5)
2. According to the computer records the claimant served a waiting period with the week ending 11/16/13, and he certified for unemployment benefits and received benefits for the week ending 11/23/13 through the week ending 12/7/13 and he was paid total unemployment benefits for those weeks.
3. The claimant continued to certify for benefits for the week ending 12/14/13 through the week ending 3/15/14, but he was disqualified for these weeks. The records indicate that the claimant certified for the week ending 11/23/13 on 11/24/13, and that from the week ending 11/30/13 through the week ending 2/15/14 the claimant certified for benefits on 2/22/14. After the claimant filed for the week ending [11/23/13] he was locked out from signing by the Division of Unemployment Assistance (DUA). The claimant was informed that during this time the DUA was trying to verify his eligibility for benefits because he (the claimant) is a United States citizen working in the U.S. for a Canadian company. (1)
4. According to the computer records when the claimant certified for unemployment benefits from the week ending 11/16/13 through the week ending 1/18/14 he indicated that he was not looking for work. The claimant does not dispute that he was not looking for work during these weeks. Because his employer kept telling him he would be going back to full time work soon. (2 see below)
5. On 4/10/14 the claimant was mailed a Notice of Disqualification which stated:

Reasoning and Findings

You did not meet the minimum work search requirements of the law.

Applicable Section of Law

Massachusetts General Law Chapter 151A, Section 24(b)

Effect of this Determination

You are not entitled to receive benefits for the period beginning 12/8/13 and through 3/15/14.

6. On 4/16/14 the claimant appealed the disqualification stating:

"Disqualification reasoning is inaccurate I was laid off by my employer on a temporary basis during the holiday and scheduled to return incl 12/22/13 - 1/18/14.
7. The claimant generally worked for his employer forty hours per week. When the claimant returned to work in January 2014 he was working less than forty hours per week. When the claimant returned to work in January 2014 following his layoff, he was working part-time.

8. The claimant was not looking for full-time work while he worked part-time hours for his employer. He was not looking for full-time work because his employer indicated that eventually he would be working full-time again for the instant employer.(4)
9. During the period of 12/8/13 through 3/15/13 there is no period during which the claimant was laid off for more than four straight weeks. (3a).
10. When the claimant was initially laid off in December 2013 the claimant was not told the date that he was going to return to work for his employer, but during the second week he was told when he would return. (3b)
11. The claimant worked and earned the following: (3c)

Week Ending	Hours Worked	Earnings
12/14/13	26	\$728.00
12/21/13	34	\$952.00
12/28/13	0	0
1/4/14	0	0
1/11/14	0	0
1/18/14	0	0
1/25/14	31	\$868.00
2/1/14	22	\$616.00
2/8/14	11	\$308.00
2/15/14	22	\$616.00
2/22/14	18	\$504.00
3/1/14	33	\$924.00
3/8/14	8	\$224.00

During the week ending 3/15/15 the claimant became separated from this employer. According to the records no earnings were reported for this week.
(3 c)

The examiner did not enter into the record the Continued Claims Summary forms for the week ending 11/16/13 through the week ending 1/18/14 which indicate the claimant was “not” looking for work because the claimant does not dispute that he was “not” looking for work during those weeks.

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 that the claimant was

obligated to search for work as of December 8, 2013; therefore, we conclude that the claimant is not subject to disqualification, 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

Under this section of law, the claimant has the burden to show that he meets each requirement. He must be able to work, available for work, and actively seeking work in each week that he claims benefits.

However, there are certain limited exceptions to the G.L. c. 151A, § 24(b), requirements. These exceptions have been adopted by the DUA and applied by the Board. For example, Section 1051 of the DUA's Service Representatives' Handbook ("Handbook"), titled "Vacation Shutdown or Brief Layoff," states, in relevant part, the following:

A claimant who is temporarily unemployed because of a vacation shutdown or a brief layoff not to exceed four weeks with a definite date to return to work with the same employer is not required to be available for work or actively seeking work with other employers (e.g., a manufacturer has a vacation shut-down every July for 2 weeks).

Indeed, the review examiner acknowledged this rule in Part III of her decision. She concluded the following:

While an individual does not have to look for work if the individual is laid off with a return to work date within a four week period, the records indicate that the claimant was laid off for more than four weeks and throughout this time he indicated that he was not looking for work.

Although the review examiner recognized the applicable rule to apply, the factual basis for her conclusion to deny benefits was not complete. In the decision, she referred to "computer records;" however, the computer records were either not in the record or did not support her conclusion that the claimant had been laid off for more than four weeks. Thus, we remanded the case for additional testimony and evidence about this issue.

The review examiner has now found that at no point in late 2013 or early 2014 was the claimant laid off for more than four weeks at a time. Finding of Fact # 11 shows clearly that there were four weeks in which the claimant did not work, contrary to the review examiner's initial conclusions. Moreover, although the claimant was not told immediately which day he would return to work, he was notified of the date within one week of his layoff. We also note that the claimant strongly suggested during his testimony that the employer knew that he would be returning to work early in 2014, and it was just a matter of when he was to go back to work. This evidence is sufficient to meet the exception to the work search requirement laid out in Section 1051 of the Handbook.

We, therefore, conclude as a matter of law that the review examiner's initial decision to deny benefits is not free from error of law or supported by substantial and credible evidence in the record, because the claimant was not obligated to search for work where his temporary layoff lasted only four weeks and he was notified of his return to work date one week into the layoff period.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the period beginning December 8, 2013, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - February 25, 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 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.

SF/rh