

0018 1355 49 (Aug. 2, 2016) – Because the claimant was self-employed during a minor portion of time limited to weekends and evenings, and it did not interfere with her ability to search for, or work, a full-time job, she is not disqualified under G.L. c. 151A, § 24(b).

Board of Review
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Issue ID: 0018 1355 49
Claimant ID: 10431321

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. 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 denied in a determination issued on April 20, 2016. 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 May 27, 2016. We accepted the claimant's application for review.

Benefits were denied because the review examiner determined that the claimant worked 20 or more hours per week in self-employment and because he deemed her work search to be inadequate. Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal.

The issue before the Board is whether the review examiner's conclusion that the claimant is ineligible for benefits because she worked 20 or more hours per week in self-employment and because her work search efforts were inadequate is supported by substantial and credible evidence and is free from error of law, where claimant's self-employment was limited to evenings and weekends, and the claimant's work search log includes numerous searches for specific jobs.

Findings of Fact

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

1. The claimant applied for benefits on November 19, 2015.

2. Prior to filing for benefits the claimant worked as a full time customer service representative from her home. The claimant worked Monday through Friday from 8:00 a.m. to 5:00 p.m. The employer had its principal location in Florida.
3. The claimant has three school age children, 14, 12, and 10 years old.
4. Commencing with the week beginning January 2, 2016, the claimant informed the Department that she had entered self-employment at 20 hours per week.
5. The claimant conducts direct sales of organic products. The claimant receives a commission based upon her sales through house parties and other methods.
6. The claimant has worked at her business as few as 13 hours and as many as 30 hours per week.
7. The claimant has invested up to \$2,500.00 in the business.
8. The claimant is seeking employment as an account manager at a level of at least \$60,000.00 in order to afford childcare.
9. The claimant began part time employment during the week beginning April 3, 2016.
10. The claimant provided a work search activity log starting with the week beginning January 31, 2016. The claimant's work search activity references monitoring Linked In, Monster, and Zip Recruiter almost weekly as one of her work search activities coupled with networking.
11. The claimant's work search activity for the week beginning February 28, 2016 a position where the result was "no remote work needed." Dates during this week were modified.
12. During the week beginning April 10, 2016, the claimant's work search informed the Department that her part time employer had hired her for the following week.
13. The Department disqualified the claimant on April 20, 2016 under provisions of s. 24(b) for the week beginning February 21, 2016 and for an indefinite period of time thereafter. The claimant appealed timely.

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, and as discussed more fully below, the Board adopts the review examiner's findings of fact. We also supplement Finding of Fact # 7 with the undisputed

evidence in the record that the claimant had not yet achieved any net earnings from her business.¹ However, as discussed more fully below, we reject the review examiner's legal conclusions that the claimant's self-employment did not meet the DUA self-employment requirements, and that the claimant's work search log did not meet the DUA requirements.

The review examiner disqualified the claimant under G.L. c. 151A, § 24(b), which 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; . . .

Also relevant in this case are Sections 1411(A) and 1411(B) of the DUA's Service Representative Handbook, which address the effect of self-employment upon a claimant's eligibility for benefits. Section 1411(A) provides as follows:

A claimant who is engaged in an independent business enterprise, sole proprietorship, or partnership which takes a major portion of his or her time is considered to be fully self-employed and ineligible pursuant to §29(a) and §1(r) on the grounds that he or she is in neither partial nor total unemployment. *If the hours of self-employment occur during a shift typical for the claimant's occupation* then a "major portion" of a claimant's time will be considered to be 20 hours per week or more.

(Emphasis added). Section 1411(B) provides:

A claimant who is self-employed during a minor portion of his or her time is eligible as long as the work does not interfere in any way with his or her employability or availability to work as an employee elsewhere. An otherwise eligible claimant whose only source of income for a given week was for part-time self-employment may qualify for benefits provided the amount of "net earnings" in any week is less than his weekly benefit rate plus the amount disregarded pursuant to § 29(b).

Section 1411(B) also notes that "net earnings" includes all self-employment income less all business deductions allowed for income tax purposes.

In this case, the claimant's self-employment did not occupy a major portion of the claimant's time. The review examiner's findings establish that the claimant's typical work hours had been Monday to Friday from 8:00 a.m. to 5:00 p.m. The record includes the claimant's undisputed and detailed testimony that her self-employment occurred in the evenings between 6:00 p.m. and 10:00 p.m., and on weekends.² Therefore, her self-employment was not during her normal or "typical shift", within the quoted portion of Section 1411(B), with which we agree. It is also clear that the claimant's net income from her part-time self-employment did not exceed her benefit rate minus her earnings disregard. Accordingly, the claimant is eligible to receive

¹ We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. See Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 360, 371 (2005).

² See Footnote 1, *supra*.

benefits during the period of time at issue, because she is self-employed during a minor portion of time, and because her self-employment does not interfere with her employability or availability to work full-time elsewhere.

We also conclude that the claimant's work search logs evidence her compliance with the requirement in Section 24(b) that she be "actively seeking" work. The DUA has set forth guidelines as to whether such work search logs reflect a sufficiently active search, and those guidelines include at least three searches per week on three different days, varied search methods, identification of specific prospective employers, the names of the persons contacted, the title of positions applied for, methods of contact, and the results. The claimant's work search logs, which are included in the record, meet these standards.

We, therefore, conclude as a matter of law that the claimant is eligible to receive benefits, as her self-employment did not interfere with her ability to search for full-time work or her availability for full-time work, and her work search logs comply with the DUA requirements.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning February 21, 2016, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION – August 2, 2016



Judith M. Neumann, Esq.
Member



Charlene A. Stawicki, Esq.
Member

Chairman Paul T. Fitzgerald, 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

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.

SPE/rh