

0019 4545 15 (Dec. 2, 2016) – For purposes of G.L. c. 151A, § 24(b), a non-citizen could establish that he was legally permitted to work in the United States by presenting a driver's license and a U.S. Social Security card (other than a card stating it is not valid for employment).

**Board of Review**  
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**Issue ID: 0019 4545 15**

## **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 on August 10, 2016. On September 3, 2016, the DUA issued a Notice of Disqualification providing that the claimant was not entitled to benefits, because he had not established he was legally permitted to work in the United States. 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 October 8, 2016. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant did not establish that he was available for work and, thus, was not entitled to benefits under G.L. c. 151A, § 24(b). 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 on appeal is whether the review examiner's conclusion that the claimant did not establish that he was available for work under G.L. c. 151A, § 24(b), is supported by substantial and credible evidence and is free from error of law, where the claimant provided copies of his Social Security card and current driver's license to establish that he is legally permitted to work in the United States.

### **Findings of Fact**

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

1. The claimant filed a claim for unemployment benefits on August 10, 2016. The effective date of the claim is August 7, 2016.
2. On January 15, 2014, a “Notice of Disqualification” (the Notice) was issued by the Department of Unemployment Assistance (DUA) finding that the claimant had not established his legal authorization to work in the United States and, therefore, disqualifying him from receiving unemployment insurance benefits indefinitely beginning the week ending August 13, 2016.
3. Following the claimant’s appeal of the Notice, a hearing was held on October 7, 2016.
4. At the hearing, the claimant provided various documents which established his identity, including a Social Security card and current Massachusetts driver’s license.
5. The claimant, who is originally from Cape Verde, and who arrived in the United States in 1999, is not a citizen of the United States.
6. The claimant provided a Permanent Resident Card, which indicated that he has been a resident since September 9, 1999. The card expired on October 28, 2009.
7. Although the claimant has had various jobs in the United States in recent years, and although he has begun applying for citizenship, the claimant – who was previously incarcerated and had since-dismissed deportation proceedings filed against him at one point – has not renewed his Permanent Resident Card.
8. The claimant is neither in possession of, nor has provided to the DUA, any currently valid documentation establishing his authorization to work in the United States.

### Ruling of the Board

In accordance with our statutory obligation, we review the examiner’s decision to determine: (1) whether the findings of fact are supported by substantial and credible evidence; and (2) whether the original conclusion that the claimant is not entitled to benefits 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 except as follows. The portion of Finding # 2 that indicates that the Notice of Disqualification was issued on January 15, 2014, is set aside, as the documentation in the record establishes that the Notice of Disqualification was issued on September 3, 2016. We also set aside Finding # 8, which indicates that the claimant has not provided to the DUA current valid documentation establishing his authorization to work in the United States. As explained more fully below, the claimant provided to the DUA his current driver’s license and Social Security card, which together establish his identity and that he is legally permitted to work in the United States. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence.

In determining the claimant's eligibility for benefits, we look to 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 . . . .

The review examiner concluded that the claimant was not entitled to benefits under G.L. c. 151A, § 24(b), because he failed to establish that he is authorized to work in the United States. The review examiner based his decision on the fact that the claimant presented an expired permanent resident card to the DUA. We disagree with the examiner's decision because presenting a current permanent resident card is not the only method available to the claimant to establish that he is legally permitted to work in the United States. Section 1513(C) of the DUA Service Representative Handbook (SRH) indicates that a claimant who identifies as a non-citizen must provide documents establishing that he is legally authorized to work. Furthermore, the claimant has a right to choose which documents to submit to the DUA to establish his availability for work under G.L. c. 151A, § 24(b). Here, although the claimant provided an expired permanent resident card, the review examiner found that he also provided copies of his Social Security card and current Massachusetts driver's license. Under section 1513(C) of the SRH, a combination of a driver's license and a U.S. Social Security card (other than a card stating it is not valid for employment) may establish availability for work. Since the documents provided by the claimant meet the requirements outlined in section 1513(C) of the SRH, we conclude that the claimant has established that he is legally permitted to work in the United States and is, therefore, available for work, under G.L. c. 151A, § 24(b).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending August 13, 2016, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - December 2, 2016**



Paul T. Fitzgerald, Esq.  
Chairman



Charlene A. Stawicki, Esq.  
Member

Member Judith M. Neumann, 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.

SVL/rh