

Because the claimant was in the United States during the majority (at least 4 days) of the two weeks at issue, so he is entitled to benefits under G.L. c. 151A, § 25(a). We will not require the claimant to be available for other work under G.L. c. 151A, § 24(b) prior to starting a new job.

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

**Paul T. Fitzgerald, Esq.
Chairman
Judith M. Neumann, Esq.
Member
Charlene A. Stawicki, Esq.
Member**

Issue ID: 0019 5816 39

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Kristina Gasson, a review examiner of the Department of Unemployment Assistance (DUA), to deny the claimant unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

On September 20, 2016, the agency issued a determination denying the claimant unemployment benefits for the weeks ending August 20, 2016, and August 27, 2016. The claimant appealed this determination to the DUA hearings department. Following a hearing on the merits, the review examiner rendered a decision on October 22, 2016, which affirmed the part of the agency determination denying benefits to the claimant during the week ending August 20, 2016, and reversed the part of the determination denying full benefits during the week ending August 27, 2017, concluding that the claimant was only subject to lost time charges that week.

The review examiner reasoned that, pursuant to G.L. c. 151A, §§ 24(b), 25(a), and 430 CMR 4.04 (6)¹, the claimant was not entitled to benefits during the week ending August 20th, because he was not available for work three days that week. She further concluded that the claimant was only subject to lost time charges² for the week ending August 27th, because his unavailability that week was fewer than three days. 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 failed to meet the filing and registration requirements, under G.L. c. 151A, § 25(a), and the availability requirements, under G.L. c. 151A, § 24(b), is supported by substantial and credible evidence and is free from error of law, where the findings indicate that the claimant was in the United States

¹ The review examiner mistakenly cited 430 CMR 4.06 in her decision when referring to lost time charges.

² Lost time charges are amounts deducted from the weekly benefit rate for any hours that a claimant is not available for work during the week.

during the majority of the two weeks at issue, and he was going to start a new full-time job the following week.

Findings of Fact

1. The claimant filed a claim for unemployment benefits with an effective date of July 17, 2016.
2. Prior to filing his claim for benefits, the claimant worked full-time as a cybersecurity engineer. The claimant's reported earnings for the last four completed quarters before filing his claim total \$130,140.
3. On or about May 23, 2016, the claimant was offered an opportunity to work a full-time temporary position as a cybersecurity engineer for a prospective employer. The claimant was given a firm start date on or about August 12, 2016 that he would begin his temporary job on August 29, 2016.
4. During the two weeks ending August 20, 2016 and August 27, 2016, the claimant neither worked nor was offered work other than the temporary position scheduled to begin on August 29, 2016.
5. During the two weeks ending August 20, 2016 and August 27, 2016, the claimant was physically able to work. There were no medical restrictions affecting the claimant's ability to perform work during these two weeks.
6. During the two weeks ending August 20, 2016 and August 27, 2016, the claimant actively sought work. The claimant sought work every day each week by contacting recruiting agencies, performing online job searches, and direct applications.
7. The claimant was unavailable for work from Thursday, August 18, 2016 to Monday, August 22, 2016. The claimant was not available for work during this time period because he traveled to the Bahamas on vacation.
8. On August 21, 2016, the claimant requested benefits for the week ending August 20, 2016 from Nassau, Bahamas.
9. The claimant returned to the United States on Monday, August 22, 2016.
10. On August 29, 2016, the claimant returned to work full-time.
11. The Department of Unemployment Assistance (DUA) Aggregate Workforce Analytics Reporting Engine (AWARE) reported that the claimant requested benefits from an Internet Proxy (IP) address in the Bahamas.

12. On September 20, 2016, the DUA issued the claimant a Notice of Disqualification, indicating that in accordance with the provisions of Section 25(a) of the Law, he failed to meet the registration requirements of the Law for the two weeks ending August 20, 2016 and August 27, 2016.

13. The Notice further stated that the claimant was overpaid in the amount of \$747.00 for the week ending August 20, 2016.

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. In adopting these findings, we deem them to be supported by substantial and credible evidence. However, we conclude that the findings support an award of benefits.

The crux of the matter before us relates to the claimant's certification for benefits during the period at issue. Consequently, the claimant's eligibility for benefits is governed by G.L. c. 151A, § 25(a), which provides, in relevant part, as follows:

[No waiting period shall be allowed and no benefits shall be paid to an individual under this chapter for]—(a) Any week in which he fails without good cause to comply with the registration and filing requirements of the commissioner. The commissioner shall furnish copies of such requirements to each employer, who shall notify his employees of the terms thereof when they become unemployed.

We note at the outset that the United States does not have a reciprocal agreement on the payment of unemployment benefits with any foreign country except Canada. *See* 430 CMR 4.00; *see also* the DUA Service Representatives Handbook at § 1616 (B). As a result, a claimant is not allowed to file benefit certifications for periods in which he was outside of the United States, its territories or possessions, or Canada. Here, the claimant traveled to the Bahamas for a vacation on August 18, 2016, and returned to the United States on August 22, 2016. The review examiner concluded that, because the United States does not have a reciprocal agreement on the payment of benefits with the Bahamas, the claimant failed without good cause to meet the filing and registration requirements, under G.L. c. 151A, § 25(a), during the weeks at issue. The review examiner also concluded that the claimant was subject to lost time charges, under G.L. c. 151A, § 24(b), and 430 CMR 4.04(6). We disagree.

Since the claimant was in the United States for the majority of the weeks ending August 20, 2016, and August 27, 2016 — at least four complete days each week — he is not disqualified, under G.L. c. 151A, § 25(a), for those weeks. *See* Board of Review Decision 0015 1720 09 (December 22, 2015) (a claimant who is in the United States during a majority (at least 4 days) of any week in which he traveled to and certified from a foreign country other than Canada is entitled to benefits, under G.L. c. 151A, § 25(a), if otherwise eligible).

Furthermore, on the record before us, it is not appropriate to penalize the claimant with lost time charges for his unavailability for work during a few days in those two weeks. Pursuant to G.L. c. 151A, § 1(r)(1), lost time charges only apply to claimants in partial unemployment who have actually turned down available work. Here, the record shows the claimant was in total rather than partial unemployment. The record further provides that the claimant's new job had a start date a week after his return from the Bahamas, and there is no indication that he turned down any work in order to take the trip. Furthermore, we are not convinced that it would be reasonable to require the claimant to be available for other work during the five days at issue when he had already secured a new job that was to begin the following week.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the weeks ending August 20, 2016 and August 27, 2016, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - February 27, 2017



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

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