

0019 5967 49 (March 20, 2017) – Although a person may technically make herself unavailable for part-time work on a given day due to attendance at a job interview, such efforts to become more fully employed are encouraged by the DUA and do not disqualify that person under the availability portion of G.L. c. 151A, § 24(b).

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 5967 49

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 for the week of May 22, 2016. 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 determined to be effective April 24, 2016. On September 2, 2016, the DUA sent the claimant a Notice of Disqualification informing her that she was not eligible to receive benefits for the week of May 22, 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 October 1, 2016.

Benefits were denied after the review examiner determined that the claimant was not available for work the week of May 22, 2016, due to her attendance at job interviews 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, we accept the claimant's application for review.¹ 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 was not available for full-time work the week of May 22, 2016, is supported by substantial and credible evidence and is free from error of law, where the claimant worked one day that week, searched for work five days during the week, and attended three job interviews.

Findings of Fact

¹ The claimant's appeal was timely filed in October of 2016. However, the agency incorrectly entered the appeal into the DUA's UI Online computer system. Consequently, the Board was not aware of the appeal until March of 2017. Since the DUA erred in the filing of the appeal, we have considered the underlying merits of the claimant's appeal and accept jurisdiction to decide the case.

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

1. The claimant filed an unemployment insurance claim and obtained an effective date of her claim of 4/24/16.
2. The claimant was employed as an on-call substitute teacher for two municipalities, "N" and "F", as of the week beginning 5/22/16 to 5/28/16. She earned \$70 per day working for "F" and \$110 per day working for "N".
3. The claimant was to tell "N" her availability every Wednesday, for the following week. She was to check "F's" online schedule each day for available shifts, and would tell "F" when she was available to work.
4. The claimant worked a full day on 5/24/16, for "F".
5. The claimant attended job interviews for other positions on 5/25/16, 5/26/16, and 5/27/16.
6. The claimant does not recall what she told "N" about her availability for the week beginning 5/22/16 to 5/28/16, on the Wednesday before that week.
7. The claimant did not check "F's" schedule for 5/25/16, 5/26/16, or 5/27/16, as she had job interviews on those dates.
8. The claimant looked for work on five separate dates between 5/22/16 and 5/28/16.

Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the findings are supported by substantial and credible evidence; and (2) whether the review examiner's ultimate conclusion is free from error of law. After such review, the Board adopts the review examiner's findings of fact and credibility assessment except for the day noted in Finding of Fact # 6. The clear testimony of the claimant was that she had to notify Town "N" of her availability on the Thursday before the following week, not the Wednesday. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant is disqualified, under G.L. c. 151A, § 24(b), for the week at issue.

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 claimant has the burden to show that she meets each requirement of this statute. There is nothing in the record which indicates that the claimant was not capable of working the week of May 22, 2016. Indeed, she performed one day of work on May 24. In addition, the review examiner found that the claimant looked for work on five days during the week. *See* Finding of Fact # 8.

The main issue to be addressed is whether the claimant was available for work. After noting that the claimant was not in contact with Town “F” for the week of May 22 and that the claimant did not recall if she informed Town “N” that she would be available for work, the review examiner concluded that the claimant was not available, as required by the statute, “because she had job interviews on 5/25/16, 5/26/16, and 5/27/16.”

Thus, the review examiner’s reasoning hinges on the idea that a person is not available for work if they are attending job interviews or, by extension, engaging in job search activities. We think that such a conclusion is at odds with the purpose of the unemployment law and creates tension with the requirement that a claimant be actively seeking work in each week that she claims unemployment benefits. The requirements of G.L. c. 151A, § 24(b), are in place to ensure that a person who wants unemployment benefits is making efforts to become fully employed again. We think that the review examiner’s findings establish that the underlying purpose of the statute was met. The claimant was capable of working, she worked at least one day, and she was searching for work — in part through job interviews that might result in full time employment.

We state again, in no uncertain terms, that we reject the reasoning used both by the review examiner and the DUA in its September 2, 2016, determination. The reasoning appears to be contrary to at least one provision of the DUA’s own Service Representatives’ Handbook. Section 1032(C) of the handbook provides the following:

A claimant who travels during a week or part of a week for which benefits are claimed is not disqualified . . . if he or she was traveling directly from one area to another for the main purpose of seeking new employment or reporting for a pre-arranged job interview.

The clear intent of this provision is to avoid penalizing a person under the availability prong of the statute if, by fulfilling the “actively seeking” prong, they put themselves in a situation where they would be unable to take on employment during the week. Of course, in this case, the claimant was not traveling to seek out new work. However, the underlying reasoning and rationale is the same. Although a person may technically make herself unavailable for work on a given day due to her attendance at a job interview, such efforts at finding suitable work are encouraged by the DUA and do not result in a conclusion that the person is disqualified, under the availability portion of G.L. c. 151A, § 24(b).

We, therefore, conclude as a matter of law that the review examiner’s decision to deny benefits for the week of May 22, 2016, is not free from error of law or supported by substantial and credible evidence, because the claimant’s active effort to obtain better work by attending job interviews does not render her unavailable for work, as contemplated by G.L. c. 151A, § 24(b).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week of May 22, 2016, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION – March 20, 2017



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.

SF/rh