

Board of Review
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Issue ID: 0019 6589 60

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Meghan Orio-Dunne, a review examiner of the Department of Unemployment Assistance (DUA), to deny the claimant benefits for the period beginning August 21, 2016 through October 22, 2016. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On October 27, 2016, the agency initially determined that the claimant was not entitled to unemployment benefits for the period from August 21, 2016, through October 22, 2016. The claimant appealed, and both parties attended the hearing. In a decision rendered on March 25, 2017, the review examiner affirmed the agency determination, concluding that the claimant was not in unemployment for the period at issue and, thus, was disqualified under G.L. c. 151A, §§ 29 and 1. The Board accepted the claimant's application for review.

Ruling of the Board

After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we conclude that the review examiner's decision is based on substantial evidence and is free from any error of law affecting substantive rights.

In Part III of her decision, the review examiner noted that "[t]he claimant's testimony varied vastly from both the testimony of the employer's witnesses and the written statement she provided to the Agency and is not deemed credible." In unemployment hearings not conducted by the Board of Review, the review examiner has "[t]he responsibility for determining the credibility and weight of [conflicting oral] testimony, . . ." Hawkins v. Dir. of Division of Employment Security, 392 Mass. 305, 307 (1984), *quoting* Trustees of Deerfield Academy v. Dir. of Division of Employment Security, 382 Mass. 26, 31–32 (1980). We will not disturb a credibility assessment unless it is unreasonable or unsupported by the record. *See* School Committee of Brockton v. Massachusetts Commission Against Discrimination, 423 Mass. 7, 15 (1996). Here, the claimant's hearing testimony was that she was initially told that she was laid off, that she did not need to care for her father 24/7, that she was searching for work outside of her home, and that she never requested or needed to take an extended leave of absence. This testimony is inconsistent with what she initially reported to the agency. *See* Exhibit # 2. Although the claimant tried to explain her initial responses, and she tried to offer evidence to

support her theory of the case,¹ the review examiner was not required to believe her self-serving testimony. *See McDonald v. Dir. of Division of Employment Security*, 396 Mass. 468, 470 (1986). In short, we are unpersuaded that the credibility assessment is unsupported or unreasonable.

This being the case, it follows that the claimant's appellate argument that Board of Review Decision 0015 4145 42 (Nov. 23, 2015) controls the outcome of her case is unavailing. In that case, the review examiner found that the claimant needed to reduce his availability for work due to his need to care for his children. However, he was still available for work Monday through Friday from 8:45 a.m. to 3:45 p.m., while his children attended school. Based on this availability, the Board concluded that the claimant met the requirements of 430 CMR 4.45, and he was not subject to disqualification under G.L. c. 151A, §§ 29 and 1.

Here, because the review examiner did not find the claimant's testimony credible, she clearly did not believe that the claimant was available for work, actively seeking work, and genuinely attached to the labor market. Thus, even though the claimant submitted work search logs as Exhibit # 12, the review examiner, who had problems with the claimant's credibility, was free to reject them as not being accurate or authentic. The review examiner chose to make findings referencing the claimant's initial statements to the agency that she was taking care of her father 24/7, instead of findings in line with her hearing testimony that she was available to work almost immediately after the filing of her unemployment claim.² The facts of this case are distinguishable from the facts found in Board of Review Decision 0015 4145 42. Therefore, we decline to apply the holding of that decision to the case before us now.

The review examiner's decision is affirmed. The claimant is denied benefits for period beginning August 21, 2016, through October 22, 2016.

¹ For example, the claimant argued that she did not need to care for her father 24/7. In support of this argument, she testified that she had obtained at-home care for him during the week of August 21, 2016. She also provided some documentation that her father had long-term care insurance. *See* Exhibit # 13. However, this documentation does not support her testimony that he had at-home care. Documentation that she had obtained the at-home care could have constituted bills for services rendered to her father, a schedule of nurses or CNA's who cared for her father, or some contract or health care plan showing at-home visits. Although the hearing was conducted over the course of three days, and, thus, the claimant had ample opportunity to provide such evidence, she did not offer probative evidence to support her testimony.

² We note that the claimant's initial statement to the agency that she was "looking for jobs I can do from home while I take care of my Dad" is inconsistent with her work search log. Moreover, even if the log was consistent with the initial statement, it would raise a question as to whether she would have "effectively [removed herself] from the labor force." 430 CMR 4.45(1)(b). In any event, the review examiner made no findings about her work search, suggesting that, given her father's needs, the review examiner was not convinced that the claimant was actively seeking work for the time period addressed.

N.B.: While reviewing this case, the Board noted that following the period at issue in this matter, the claimant began collecting benefits. She was determined to have a benefit rate of \$267.00 per week, and she was determined to have a total benefit credit of \$6,535.00. She collected benefits for the period from October 30, 2016, through the week ending April 22, 2017, without interruption. She has no balance on her claim. Consequently, even if she had prevailed in this matter, she would not have been paid any more benefits.

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 13, 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.

SF/rh