

**The bulk of the claimant's evidence, which simply shows unsolicited emails from recruiters, does not demonstrate that the claimant actively searched for work. During those weeks that the claimant showed that he affirmatively applied for jobs, networked with colleagues, or searched job boards on at least three days a week, the claimant has satisfied his burden under G.L. c. 151A, § 24(b).**

**Board of Review  
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**Issue ID: 0019 7342 11**

## **BOARD OF REVIEW DECISION**

### **Introduction and Procedural History of this Appeal**

The claimant appeals a decision by M. Lerner, 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 we affirm in part and reverse in part.

The claimant separated from his prior employment and filed a claim for benefits, effective September 18, 2016, which the DUA denied in a determination issued on October 10, 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 November 23, 2016. The claimant filed an appeal with the Board, which was initially denied on December 20, 2016. Subsequently, the claimant appealed to the District Court. In response to a request from the Director of the DUA, we rescinded our decision to deny the claimant's appeal.

Benefits were denied after the review examiner determined that the claimant had not shown that he had actively searched for work during the weeks that he certified for benefits and, thus, he was disqualified under G.L. c. 151A, § 24(b). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, the claimant's appeal, and the request from the DUA Director, we remanded the case to the review examiner to afford the claimant an opportunity to present further evidence of his job search activities. The claimant attended the remand hearing and, thereafter, the review examiner issued her consolidated findings of fact. Our decision is based upon our review of the entire record. The delay in rendering this decision is due, in part, to a miscommunication about scheduling an initial remand hearing and a claimant request to postpone the second scheduled remand hearing, as well as to the need to review voluminous records which the claimant has presented as evidence.

The issue before the Board is whether the review examiner's conclusion, that the claimant failed to demonstrate that he engaged in an active search for work during his period of unemployment, is supported by substantial and credible evidence and is free from error of law. Findings of Fact

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

1. The claimant filed his 2016-01 unemployment claim on September 20, 2016, effective September 18, 2016. The claimant requested benefits for each of the weeks ending September 24, 2016 through November 19, 2016 and the week ending January 7, 2017.
2. When the claimant initially filed his 2016-01 claim, he was asked if he was in school or a training program. He answered "yes" because he was enrolled in a casual, online, program for enhancing skills. This program provides no credits or certification. The claimant pays \$35 a month to be allowed to watch online training videos at his leisure.
3. Sometime prior to September 2016, the claimant signed up with the job search-engine websites Monster.com, Indeed.com and Dice.com. He also was signed up with the Linked in social media site. He checked these sites on a regular basis to see if any suitable position had been posted. If he found suitable positions, he would submit an application for the position. He also received inquiries from recruiters who saw his resume on these sites regarding his interest in working for one of their clients.
4. Between September 18, 2016 and January 7, 2017, the claimant made use of at least four different recruiting companies in an attempt to find employment. He received and sent e-mails to his contacts at these companies regarding positions that clients of the recruiting company had available that matched the claimant's skill set and interests. Through these e-mails, the claimant gained information about the positions and arranged for interviews, arranged for phone calls to discuss the strategy for such interviews and to discuss the results of the interview. He also received offers of employment in this manner and negotiated for better terms.
5. On September 19, 2016, the claimant received an e-mail through Monster.com regarding a position that did not match his skill set. He also checked Monster.com, Indeed.com and Dice.com for positions and found no matches.
6. On September 20, 2016, the claimant received an e-mail regarding a position that did not match his skill set. He also spoke to a colleague regarding an opening where this colleague was presently working as well as any other openings of which he was aware.
7. On September 21, 2016, the claimant received an e-mail regarding a position that did not match his skill set.

8. On September 22, 2016, the claimant received an e-mail regarding a position that did not match his skill set.
9. On September 23, 2016, the claimant received two e-mails regarding positions that did not match his skill set.
10. On September 26, 2016, the claimant received three e-mails regarding positions that did not match his skill set.
11. On September 27, 2016, the claimant received an e-mail regarding a position that did not match his skill set. He also checked Monster.com, Indeed.com and Dice.com for positions and found no matches.
12. On September 28, 2016, the claimant received an e-mail regarding a position that did not match his skill set.
13. On September 29, 2016, the claimant received an e-mail regarding a position that did not match his skill set. He also called three colleagues to ask if they knew of any job openings.
14. On October 3, 2016, the claimant received two e-mails regarding positions that did not match his skill set.
15. On October 4, 2016, the claimant received two e-mails regarding positions that did not match his skill set.
16. On October 5, 2016, the claimant checked Monster.com, Indeed.com and Dice.com and found no matches.
17. On October 10, 2016, the claimant received two e-mails regarding positions that did not match his skill set.
18. On October 10, 2016, DUA issued a Notice of Disqualification with Issue Identification Number 0019 7342 11-01 stating that the claimant was disqualified under Section 24(b) of the law for the period starting September 18, 2016 and for an indefinite period of time thereafter, until he met the requirements of the law.
19. On October 11, 2016 the claimant received two e-mails regarding positions that did not match his skill set.
20. On October 12, 2016, the claimant received an e-mail regarding a position that did not match his skill set. He also submitted an application for a position with Natixis.

21. On October 13, 2016, the claimant received an e-mail regarding a position that did not match his skill set.
22. On October 14, 2016, the claimant received an e-mail regarding a position that did not match his skill set.
23. On October 17, 2016, the claimant received two e-mails regarding positions that did not match his skill set. He also checked monster.com, Indeed.com and Dice.com and found no matches.
24. On October 18, 2016, the claimant received two or three e-mails regarding positions that did not match his skill set.
25. On October 19, 2016, the claimant received an e-mail regarding a position that did not match his skill set. The claimant also checked Monster.com, Indeed.com and Dice.com and found no matches.
26. On October 21, 2016, the claimant received an e-mail from Dice.com and three other e-mail[s] regarding employment from employers or recruiters, of which at least one was regarding a position that did not match the claimant's skill set. He also spoke by phone with a recruiter to discuss his background.
27. On October 24, 2017, the claimant received an e-mail regarding a position that did not match his skill set.
28. On October 25, 2016, the claimant received two e-mails regarding positions that did not match his skill set. He also checked Monster.com, Indeed.com and Dice.com and found no matches.
29. On October 26, 2016, the claimant received an e-mail regarding a position that did not match his skill set.
30. On October 27, 2016, the claimant checked Monster.com, Indeed.com and Dice.com and found no matches.
31. On October 28, 2016, the claimant received an e-mail regarding a position that did not match his experience level. He also checked Monster.com, Indeed.com and Dice.com and found no matches.
32. On October 31, 2016, the claimant received an e-mail regarding a position that did not match his skill set.
33. On November 1, 2016, the claimant received an e-mail regarding a position that did not match his experience.
34. On November 2, 2016, the claimant checked Monster.com, Indeed.com and Dice.com but found no matches.

35. On November 3, 2016, the claimant received an e-mail regarding a position that did not match his skill set. He also received an e-mail regarding a contract position but did not consider it a good fit as he was looking for a permanent position. He also submitted an application online to [Company A].
36. On November 4, 2016, the claimant received an e-mail regarding a position that did not match his skill set, was permanent and would require him to relocate. He also checked Monster.com, Indeed.com and Dice.com and found no matches.
37. On November 6, 2016, the claimant received an e-mail regarding a position that did not match his skill set. He also checked Monster.com, Indeed.com and Dice.com and found no matches.
38. On November 8, 2016, the claimant received a job alert e-mail from Dice.com. He also received e-mails from four employers/recruiter regarding employment possibilities. At least one of the e-mails was regarding a position that did not meet the claimant's skill set. He replied to one of the e-mails to inquire about open positions.
39. On November 9, 2016, the claimant received a job alert e-mail from Dice.com. He also received e-mails from four employers/recruiter regarding employment possibilities. At least two of the e-mails were regarding a position that did not meet the claimant's skill set, one of which was also not for a permanent position.
40. On November 10, 2016, the claimant received a job alert e-mail from Dice.com. He also received e-mails from four employers/recruiter regarding employment possibilities. At least two of the e-mails were regarding positions that did not match the claimant's skill set. Another was for a contract not a permanent position and did not match his skill set.
41. On November 11, 2016, the claimant received a job alert e-mail from Dice.com. He also received e-mails from four employers/recruiter regarding employment possibilities. At least one did not meet the claimant's skill set. The claimant also checked Monster.com, Indeed.com and Dice.com and found no matches.
42. On November 15, 2016, the claimant received an e-mail regarding a position that did not match his skill set.
43. On November 16, 2016, the claimant received an e-mail from Dice.com regarding a position. He submitted an application for the position through an online process.

44. On November 17, 2016, the claimant checked Monster.com, Indeed.com and Dice.com and found no matches.
45. On November 18, 2016, the claimant received an e-mail from Dice.com regarding a position. He submitted an application for the position through an online process.
46. On November 16, 2016, the claimant received an e-mail from Dice.com regarding a position. He submitted an application for the position through an online process.
47. On January 3, 2017, the claimant received an e-mail regarding a position that did not match his skill set.
48. On January 4, 2017, the claimant received an e-mail from Dice.com regarding a position that did not match his skill set.
49. On January 6, 2017, the claimant received an e-mail from Dice.com regarding a position that did not match his skill set.
50. On January 9, 2017, the claimant requested benefits for the week ending January 8, 2017.
51. Allowing that checking Monster.com, Indeed.com and Dice.com shall be considered verifiable work search activities and shall be counted on multiple days of the week, and that receiving e-mails from other persons and entities shall not be considered a verifiable work search activity as it is not an affirmative action, the weeks that the claimant requested benefits for and in which he also engaged in at least 3 verifiable work search activities on at least 3 days of the week are as follows:
  - a. The week ending October 22, 2016;
  - b. The week ending November 5, 2016;
  - c. The week ending November 12, 2016;
  - d. The week ending November 18, 2016.

#### 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. After such review, the Board adopts the review examiner's consolidated findings of fact and credibility assessment except as follows. Consolidated Finding # 19, which lists the claimant's job search activities on October 11, 2016, omits the additional activity of checking Monster.com, Indeed.com, and Dice.com. The date of November 16, 2016 in Consolidated Finding # 46 appears to be a typographical error, as the job search activities referenced in this finding took place on November 21, 2016. Additionally, this consolidated finding should

include that the claimant again checked the job board sites of Monster.com, Indeed.com, and Dice.com as well on November 21, 2016.<sup>1</sup> In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. As discussed more fully below, we believe that the consolidated findings after remand now demonstrate that the claimant has satisfied his burden to show that he engaged in an active search for new employment in certain weeks during the period that he certified for benefits.

In order to be eligible for benefits, a claimant must actively search for new employment. This requirement is set forth 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 . . . .

Under G.L. c. 151A, § 24(b), the burden of proof is on the claimant. *See Evancho v. Dir. of Division of Employment Security*, 375 Mass. 280, 282–283 (1978) (“the burden rests on the unemployed person to show that his continued unemployment is not due to his own lack of diligence”) (citation omitted). He must show a reasonable, good-faith effort to search for new employment. *See Id.* at 282.

The DUA expects a claimant “to follow a course of action which is reasonably designed to result in prompt re-employment in suitable work.” DUA Service Representative Handbook, § 1005(C). In her original decision, the review examiner relied upon Exhibit 7, a work search log presented during the initial hearing. The majority of entries in this log referred to emails *received* by the claimant from recruiters, job board cites, or potential employers. This type of evidence does not demonstrate that the claimant took any action. After remand, the claimant has included additional evidence, which now shows that he affirmatively took steps to search for work on certain dates. That is, he applied for jobs, searched job board websites, or networked with colleagues.

Specifically, Consolidated Finding # 51 identifies four weeks in which the claimant presented evidence showing that he engaged in three affirmative work search activities on at least three days of the week. The review examiner was applying the DUA’s “three and three” guideline (three methods of work search on three different days per week). This guideline is a well-known “rule of thumb” demonstrating a good faith effort to find work. *See* DUA Service Representative Handbook, § 1050(A). The Supreme Judicial Court has stated that courts will “give deference to the experience, technical competence, and specialized knowledge of the [DUA], as well as the discretionary authority conferred upon [the agency]” in setting requirements to determine

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<sup>1</sup> *See* the entries for October 11, 2016 and November 21, 2016, in Remand Exhibit 9, which is a detailed spreadsheet of the claimant’s job search activities. Although not explicitly incorporated into the review examiner’s findings, these entries are part of the unchallenged evidence introduced at the hearing and placed in the record, and the information contained therein is thus properly referred to in our decision today. *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. 370, 371 (2005).

whether a claimant is actively seeking work. Grand v. Dir. of Division of Employment Security, 393 Mass. 477, 481 (1984) (internal quotations and citations omitted).

The bulk of the additional evidence presented during the remand hearing included further unsolicited emails to the claimant. We think the review examiner fairly relied upon the DUA's guidelines in assessing whether the claimant's evidence showed other more active work search activities. During the four weeks listed in Consolidated Finding # 51, the claimant actively searched for work during three different days of the week. However, because Consolidated Findings ## 28, 30, and 31 show that the claimant checked the job boards on Monster.com, Indeed.com, and Dice.com on three separate days during the week ending October 29, 2016, we add this additional week to the list of weeks in which the claimant has met his burden to demonstrate an active work search.

We, therefore, conclude as a matter of law that the claimant is eligible for benefits only during the five weeks in which he has shown that he was actively seeking work within the meaning of G.L. c. 151A, § 24(b). We further conclude that the review examiner properly declined to consider the claimant's work search evidence for those weeks in which he failed to certify for benefits, as required under G.L. c. 151A, § 25(a).<sup>2</sup>

The portion of the review examiner's decision, which disqualified the claimant during the weeks ending September 24, 2016 through October 15, 2016, and during the week ending January 7, 2017, is affirmed. The claimant is not eligible for benefits for these weeks.

The portion of the review examiner's decision, which disqualified the claimant during the weeks ending October 22, 2016 through November 19, 2016, is reversed. The claimant is entitled to benefits for these five weeks, if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - November 30, 2017**



Paul T. Fitzgerald, Esq.  
Chairman



Charlene A. Stawicki, Esq.  
Member

**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)**

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<sup>2</sup> The claimant may contact the DUA Call Center at (617) 626-6800 to inquire about re-opening his claim to consider whether he is entitled to a late certification for those weeks in which he did not certify for benefits.



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.

AB/ jv