

Under DUA's Service Representative's Handbook, § 1050(A), the claimant does not have to meet the work search requirements of G.L. c. 151A, § 24(b) during the four weeks prior to starting a new full-time job, provided he had been offered and accepted the job prior to or at the start of the four-week period. Thus, the claimant was eligible for benefits during four of the six weeks between accepting his offer of full-time work and starting his job.

**Board of Review
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Issue ID: 0019 9732 45

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Marielle Abou-Mitri, 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 filed a claim for unemployment benefits with the DUA with an effective date of October 23, 2016. On November 3, 2016, the agency denied benefits to the claimant as of the week ending October 29, 2016, because he did not meet the requirements of G.L. c. 151A, § 24(b). 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 April 4, 2017. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not actively searching for work and, thus, was not entitled to benefits, 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 remanded the case to the review examiner to obtain additional testimony and other evidence pertaining to the date the claimant was offered full-time employment. The claimant attended the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue on appeal is whether the review examiner's conclusion that the claimant was not entitled to benefits, under G.L. c. 151A, § 24(b), is supported by substantial and credible evidence and is free from error of law, where the consolidated findings show that the claimant did not meet the work search requirement of G.L. c. 151A, § 24(b), because he had received an offer of full-time employment.

Findings of Fact

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

1. In September of 2015, the claimant enrolled at Suffolk University to obtain his MBA in Health Care Administration.
2. The claimant filed a claim for unemployment benefits effective October 23, 2016.
3. From August 30, 2016 through December 20, 2016, the claimant was taking 2 online classes, totaling 6 credits. The claimant devoted 4 hours per week to his online classes.
4. Since October 23, 2016, the claimant had no restrictions on his physical or mental ability to perform work.
5. Since October 23, 2016, the claimant was available to work a full-time schedule.
6. On October 17, 2016, the claimant was offered the position of Administrator in Training at [Employer A]. The claimant received an offer letter from the employer that provided that his employment would commence on December 5, 2016. The letter also stated that he would be paid \$90,000 annually and would work a 40-hour schedule.
7. The offer was made to the claimant in person by the Human Resources Manager. The claimant was given as much time as he needed to respond to the offer. The claimant accepted the offer right away.
8. The offer was not contingent upon the claimant meeting any requirements. Although the offer letter stated that a criminal record check (CORI) needed to be conducted, the employer had already conducted the CORI and notified the claimant that he passed the CORI check, before the offer was made.
9. Between October 17, 2016 and December 5, 2016, the claimant visited the [Employer A] three times for informal training. The claimant was not paid for attending these trainings. The claimant shadowed other employees on these three separate occasions. On a fourth occasion, the claimant went to the human resources department and met with a representative for 20 minutes to submit required medical documentation.
10. Since October 23, 2016, the claimant did not actively look for work. The claimant did not look for any other kind of work because he received an offer of employment from the [Employer A] on October 17, 2016.

11. When using the Department of Unemployment Assistance's (DUA) certification system in order to certify for benefits for the week ending November 13, 2016, November 20, 2016 and November 27, 2016, the claimant answered "1" to the question, "How many days did you perform work search activities this week?"

CREDIBILITY ASSESSMENT

At the first hearing, the claimant testified that he was offered the position at [Employer A] on December 2, 2016, and that he began working for this employer on December 5, 2016. The claimant proffered the offer letter from the [Employer A] to the Board of Review on appeal and explained at the remand hearing that he was not prepared for his first hearing, and that he misspoke about the terms of his employment with [Employer A]. The claimant further testified that he answered the questions based on his memory at the first hearing, and that he did not realize he would be questioned about the terms and conditions of his employment with [Employer A].

At the remand hearing, the claimant's testimony was direct, consistent and credible. The claimant clarified that he was offered the position on October 17, 2016. The claimant further elaborated on his previous testimony in which he stated that he had "four interviews" with the employer. At the remand hearing, the claimant explained that the meetings with the employer from October 17, 2016 through December 5, 2016 were not interviews and actually consisted of shadowing and one meeting with human resources in which he submitted medical documentation. As such, the totality of the claimant's testimony was deemed credible by this Review Examiner.

Ruling of the Board

In accordance with our statutory obligation, we review the examiner's decision to determine: (1) whether the consolidated 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 consolidated findings of fact. In adopting these findings, we deem them to be supported by substantial and credible evidence. However, we conclude that the consolidated findings support an award of benefits to the claimant during four of the six weeks 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

In the original decision, the review examiner concluded that the claimant did not meet the requirements of G.L. c. 151A, § 24(b), because, although he was capable of working and available for full-time work, he did not search for work after filing his claim during the week

ending October 29, 2016. The DUA requires that claimants meet the work search requirements of G.L. c. 151A, § 24(b), for every week claimed. However, there are a few exceptions to this rule, including being exempt from the requirement during the four weeks immediately prior to the start of new employment. *See* Service Representative Handbook § 1050(A). We agree with this provision of the Service Representative Handbook.

During the original hearing, the claimant mistakenly testified that he had not received an offer of employment until December 2, 2016. After the claimant clarified his testimony during the remand hearing, the review examiner found that he did not search for work after filing his claim, because he had already been offered a full-time job that he accepted on October 17, 2016. The start date for the claimant's new job was December 5, 2016, so at issue here are the six weeks ending October 29, 2016 through December 3, 2016. Per the exemption in section 1050(A) of the Service Representative Handbook, the claimant was not required to search for work during the weeks ending November 12, 2016, through December 3, 2016, and, therefore, he is entitled to benefits during those four weeks.

We affirm the part of the review examiner's decision that denied benefits to the claimant during the weeks ending October 29, 2016, and November 5, 2016, because the claimant did not meet the work search requirements of G.L. c. 151A, § 24(b), during those two weeks. However, we reverse the part of the decision that denied benefits to the claimant as of the week ending November 12, 2016. As noted above, the claimant is entitled to benefits between the weeks ending November 12, 2016, and December 3, 2016, because he was not required to meet the work search requirements during those four weeks.

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 18, 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