

**Board of Review
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Issue ID: 0020 2208 29

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by JoAnn Gangi, a review examiner of the Department of Unemployment Assistance (DUA), to deny benefits, beginning November 13, 2016. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On December 9, 2016, the agency initially determined that the claimant was not entitled to unemployment benefits. The claimant appealed, and attended the hearing. In a decision rendered on January 24, 2017, the review examiner affirmed the agency determination, concluding that the claimant was not in unemployment and, thus, was disqualified under G.L. c. 151A, §§ 29 and 1(r). The Board accepts 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 findings of fact are supported by substantial and credible evidence. The review examiner found the following:

1. The claimant earned a Juris Doctorate degree and is a member of the California Bar. He is not a member of the Massachusetts Bar. He lives in Massachusetts.
2. The claimant is the President, Secretary, Treasurer, and Director of a Massachusetts corporation organized on 6/1/03.
3. The corporation provides investigation and research services for individuals, businesses, and law firms, and continues to operate.
4. The claimant manages, markets, and promotes his business and provides interview and research services for clients.
5. The claimant experienced a decrease in client projects beginning in the summer of 2016, due to clients moving to other areas and other clients retiring.

6. The claimant borrowed money to maintain the business and pay himself when he experienced this decline in business.
7. The claimant stopped borrowing money to maintain the business and pay himself in November 2016.
8. The claimant filed an unemployment insurance claim on 11/23/16 and obtained an effective date of his claim of 11/13/16.
9. The claimant started contacting law firms, consulting firms, investment firms, and other business at least three days per week, to inquire whether these businesses were in need of investigative and/or legal research services after he filed the above claim.
10. The claimant inquired about an open position with the [Employer A], and inquired about in-house research and investigative positions with potential employers. He submitted job applications for at least four positions.
11. The claimant spent twenty five to thirty or more hours per week marketing, promoting, and networking to obtain new contracts for his business when he experienced a decline in business, and continued to do so after he filed the above claim.
12. The claimant reported earnings of \$179 for the week beginning 11/13/16 to 11/19/16; \$54.95 for the week beginning 11/20/16 to 11/26/16; \$1,000 for the week beginning 12/4/16 to 12/10/16; \$600 for the week beginning 12/11/17 to 12/17/16; and \$84 for the week beginning 12/18/16 to 12/24/16.

From these findings, the review examiner ultimately concluded:

The claimant is not in partial unemployment, as he is self-employed a major portion of his time. He performs work for his business twenty five to thirty or more hours per week. He networks, promotes, and markets his business. He has inquired about open research and investigative positions with employers and has applied for a handful of positions with potential employers, but the bulk of his work searches are inquiries into whether law firms, financial firms, and other types of employers are in need of research and investigative services, which are the services his business provides.

Although the claimant is not, technically, “self-employed,” since he is employed by a corporation which is a legally separate entity from the claimant, we agree with the review examiner that the primary focus of the claimant’s efforts to obtain work were on obtaining work for his own company, rather than with other employers. Limiting a work search to a single employer is insufficient, for the simple reason that it is much less likely to result in rapid re-employment, a fundamental goal of the unemployment insurance system. *See* DUA Service Representative Handbook, § 1031(D). The claimant offered testimony that he was searching for

both types of work: work for his own company and jobs that would make him an employee of another company. However, the review examiner's findings of fact, *see* Finding of Fact ## 10 and 11, which are supported by a fair view of the record, indicate that he made minimal efforts to obtain work as an employee of an entity other than [Company A], Inc. *See* Evancho v. Dir. of Division of Employment Security, 375 Mass. 280, 282–283 (1978); Conley v. Dir. of Division of Employment Security, 340 Mass. 315, 319 (1960) (six applications for work over approximately five month period not an active work search).

The claimant seeks to analogize his circumstances to the situation addressed in Board of Review Decision 0018 1355 49 (August 2, 2016). However, we think that the cases are distinguishable. That case, which was decided under G.L. c. 151A, § 24(b), involved a claimant who had worked full-time as a customer service representative from 8:00 a.m. to 5:00 p.m. prior to filing her claim. After she filed her claim, she worked 20 hours per week selling organic products. She was paid on a commission basis for that work. The work was done 13 to 30 hours per week, on nights and weekends, and was substantially different from the work that the claimant's prior day time job (customer service). The work was clearly incidental to the claimant's usual occupation or career. The Board, interpreting Sections 1411(A) and 1411(B) of the DUA's Service Representatives' Handbook, concluded that, since the claimant's work during nights and weekends did not interfere with her availability for full-time work during the day, and since she produced evidence showing an active work search for suitable full-time work, she was eligible to receive benefits.

Here, the work the claimant performs for his own company, which comprises his entire base period, is substantially the same as the work that he asserts that he is seeking with other employers. Without a clear differentiation between the two types of work search activities), the review examiner concluded that the claimant was primarily seeking work for a single employer, his own business. This conclusion is reasonable in light of the claimant's work search logs for the weeks at issue, which are for the most part vague as to whether the claimant was specifically searching for work for his company or to be an employee of another company.¹ Thus the review examiner did not find that the claimant was making active efforts to obtain work *beyond* his efforts to get work for his company. *Compare* Board of Review decision 0010 9363 77 (May 7, 2015) (claimant showed demonstrable efforts to obtain work with employers other than his own business, and so carried burden to show that he was in unemployment).² Again, her conclusions were reasonable.

¹ We also note that all of the work which the claimant did during the weeks at issue here was reported as earnings for [Company A]. In other words, the work was being funneled through the employer.

² Although the result may seem harsh for the claimant here, because, naturally, he wants his business to succeed, and in order for it to succeed, he must devote many hours to obtaining work for the company, the underlying rationale is no different from any worker who limits his job search principally to one employer. For example, a nurse with many years of experience is laid off from her position with a hospital. Since she has worked so long for the hospital, she has built up relationships and friendships and comfort with the hospital. After applying for benefits, she continuously checks the hospital website and bulletin boards to see if any new jobs open up for her. In fact, she even applies for other nursing jobs in the hospital. Only occasionally does she search elsewhere, and she rarely applies for jobs at any other hospitals. In this circumstance, the worker would not be actively seeking work, as she is limiting herself too much to one employer. The same is true of the claimant in this case, and this is what the review examiner meant in Part III of her decision, when she concluded that the claimant did not show that he was "connected to the outside labor market."

The review examiner's decision is affirmed. The claimant is denied benefits for the week beginning November 13, 2016, and for subsequent weeks, until such time as he meets the requirements of the law.

BOSTON, MASSACHUSETTS
DATE OF DECISION – March 15, 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