

Claimant submitted work search logs to support her testimony that she was actively seeking work through various means is eligible for benefits under G.L. c. 151A, § 24(b).

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Issue ID: 0021 9720 01

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 benefits for the period of March 5, 2017, through June 17, 2017. Benefits were denied on the ground that the claimant was not actively seeking work pursuant to G.L. c. 151A, § 24(b).

The claimant filed a claim for unemployment benefits. The claim was determined to be effective as of March 5, 2017. On June 27, 2017, the DUA issued a determination denying benefits, beginning March 5, 2017.¹ The claimant appealed to the DUA Hearings Department. Following a hearing on the merits, the review examiner modified the agency's initial determination in a decision rendered on November 4, 2017. In that decision, the review examiner denied benefits only for the period from March 5, 2017, through June 17, 2017. The claimant was eligible to receive benefits beginning June 18, 2017. The claimant sought review by the Board, which denied the appeal, and the claimant appealed to the District Court pursuant to G.L. c. 151A, § 42.

On December 5, 2018, the District Court ordered the Board to obtain further evidence. Consistent with this order, we remanded the case to the review examiner to take additional evidence concerning the claimant's work search efforts for the period from March 5, 2017, through June 17, 2017. The claimant attended the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact.

The issue before the Board is whether the review examiner's decision to deny benefits from March 5, 2017, through June 17, 2017, pursuant to G.L. c. 151A, § 24(b), is supported by substantial and credible evidence and is free from error of law.

After reviewing the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, the claimant's appeal, the District Court's Order, and the consolidated findings of fact, we reverse the review examiner's decision.

Findings of Fact

¹ The DUA's determination created an overpayment of benefits. See Exhibit # 7.

The review examiner's consolidated findings of fact, which were issued following the District Court remand, are set forth below in their entirety:

1. The claimant earned a Bachelor of Arts degree in Biology, in 2010.
2. The claimant worked as a Cell Processing Specialist in a laboratory at a hospital, from 12/2/13 to 2/24/17. Her duties included, but were not limited to manufacturing clinical products for clinical trials not yet approved by the Food and Drug Administration (FDA).
3. The claimant worked as a Research Assistant, conducting HIV vaccine research, and performing processing duties in a laboratory, at a hospital.
4. The claimant started the above Research Assistant position after graduating from college, and before starting the Cell Processing Specialist position.
5. The claimant learned about the above Research Assistant position through a college acquaintance. She submitted her resume to the employer and interviewed for the position before she was offered the position.
6. The claimant found out about the Cell Processing Specialist position through an acquaintance. She gave the acquaintance her resume, which was forwarded to the employer.
7. The claimant separated from employment as a Research Assistant to start the Cell Processing Specialist position. She separated from the Cell Processing Specialist position due to lack of funding on the part of the employer.
8. The claimant filed an unemployment insurance claim on 3/5/17, and obtained an effective date of her claim of 3/5/17.
9. The claimant is capable of performing work, and has been since 3/5/17. The claimant is available for full-time work, and has been since 3/5/17.
10. The claimant received and read "A Guide to Benefits and Employment Services for Claimants" after she filed the above claim. The "Guide to Benefits" states, in part, that DUA requires claimants to make at least three work searches per week, and each work search must be conducted on a different day.
11. The "Guide to Benefits" also states, in part, that claimants must keep a detailed written log of work search activities; and keep copies of documents related to work search activities, including: e-mails to or from potential employers, job application receipts, job postings, job fair announcements, and networking club information.

12. The “Guide to Benefits” states, in part, that claimants must provide work search information to DUA, upon request, along with any supporting documentation, and only three work search activities must be recorded per week, on a work search log.
13. The claimant learned about work search requirements when she signed onto UI Online and clicked on the ‘Request Benefit Payment’ link.
14. The information provided via the above link is as follows: “The Massachusetts Department of Unemployment Assistance requires that as a condition of eligibility you must: make a minimum of three work search contacts on three different days each week that benefits are claimed; keep a written log of those work search contacts; and provide a work search log to DUA upon request.”
15. The above information is also included via the above link: “The following guidelines describe the types of activities that may constitute a productive work search contact. Productive work search contacts include, but are not limited to: registering for work and reemployment services with a local Career Center; completing a job application in person or online with employers who may reasonably be expected to have openings for suitable work; mailing a job application and/or resume, as instructed in a public job notice; making in-person visits with employers who may reasonably be expected to have openings; sending job applications to employers who may reasonably be expected to have openings for suitable work; interviewing with potential employers in person or by telephone; registering for work with private employment agencies or placement services; using the employment resources available at Career Centers, such as: obtaining and using local labor market information, participating in skills assessments for occupation matching, participating in instructional workshops, or obtaining and following up on job referrals from the Career Center; attending job search seminars, career networking meetings, job fairs, or employment-related workshops that offer instruction in improving individuals’ skills for obtaining employment; using online job matching systems, including the MOSES internet-based system, to submit applications/resumes, search for matches, or request referrals, and/or apply for jobs; reporting to the Union Hall, if this is your primary work search method; and using other job search activities such as reviewing job listings on the internet, newspapers, or professional journals, contacting professional associations, and networking with colleagues or friends.”
16. The claimant also learned about work search requirements when she completed RESEA requirements at a Career Center, on 4/10/17 and 4/18/17.
17. The claimant received a handout titled “Individual Needs Assessment/Resources” when she visited a Career Center on 4/10/17. The handout lists Career Center resources available to assist jobseekers to search

for jobs, and provides a list of “Helpful Websites” jobseekers may use to search for jobs.

18. The handout lists the following five subjects under the title, “Job Search”: labor market information; assessment/personality test; write/update resume and cover letter; search for jobs; networking; and interview preparation.
19. The handout prompts jobseekers to review a separate labor market information worksheet for resources, and provides links to online skills assessment workshops. It also lists Career Center workshops that focus on skills assessments.
20. The handout also lists other applicable workshops, such as the Resume and Cover Letter Overview Workshop; Internet Job Search Workshop; Intro to LinkedIn/LinkedIn Workshops; Age is an Advantage Workshop; and Interview Boot Camp Workshop; and states that the Career Center also provides information about Job Fairs and Recruitment Events.
21. The claimant received another handout from a Career Center titled, “What Constitutes Work Search Activity? (It’s not just applying for a job).”
22. The above Career Center handout provides the follow examples of what constitutes a work search: signing up to attend a Career Center Seminar; attending the Career Center Seminar, REA Review, and any job search workshops; conducting labor market research; creating/revising resume; using online job boards such as Job Quest, Monster, Career Builder, LinkedIn, etc.; reviewing professional journals/business articles related to the labor market/job searching; contact with employers (i.e. sending a resume, online or in person application, phone interview, face to face interview, employer follow up over the phone or through e-mail); contacting/registering with staffing/temporary agencies; networking one on one, or in group sessions, and contacting professional associations; meeting with staff at Career Centers; attending job fairs; and reporting to the Union Hall if this is your primary work search method.
23. When the claimant attended her RESEA Review meeting, the Career Center employee she met with spoke with her about the different “phases” of the job search process. The Career Center employee told the claimant about the “assessment phase”, where a job seeker evaluates what types of positions he or she may be interested in, and performs labor market research regarding those positions.
24. The Career Center employee told the claimant that, following the completion of the “assessment phase”, a job seeker applies for positions with potential employers.

25. The claimant believed Career Centers were part of DUA when she completed RESEA requirements and attended workshops at her local Career Center.
26. The Quality Assurance Manager at the claimant's most recent employer showed the claimant how to: review batch records; double check work; edit standard operating procedures; make forms and submit them to document control; maintain equipment; and how to start a trial, end it, and document control paperwork that goes with it.
27. The claimant believes she is qualified for an entry-level Quality Assurance position, based on the above experience.
28. On 3/6/17, the claimant networked with a family friend who works at an Information Technology company and expressed interest in a Quality Assurance position.
29. On 3/8/17, the claimant searched for positions on a hospital's career website. She was interested in Quality Assurance positions, as well as Pharmacy Supervisor positions, and Clinical Research Coordinator positions.
30. The claimant has no previous supervisory experience. While working for her most recent employer, the laboratory in which she worked provided peptides to the hospital pharmacy.
31. On 3/9/17, the claimant spoke with her former supervisor at her most recent employer about her resume, and her former supervisor helped edit the claimant's resume.
32. On 3/13/17, the claimant spoke with the Associate Director of IRM Governance and Operations Support (ADGO) at a pharmaceutical company and inquired about a Records Management position. She was told the position was filled.
33. On 3/15/17, the claimant spoke with the Owner of a modeling agency about an opening for a stylist/nanny position. The claimant has previous babysitting experience, but no experience as a stylist.
34. On 3/16/17, the claimant spoke with the VP of Event Marketing and Partnership at a private jet company and found out that the company offered temporary work.
35. On 3/22/17, the claimant searched for jobs on her most recent employer's website. She was interested in Auditing, Quality Assurance, Regulatory, and Compliance positions.
36. On 3/23/17, the claimant searched for jobs on a health insurance company's website. She was interested in Auditing and Quality Assurance positions.

37. On 3/24/17, the claimant searched for jobs on a defense contractor and manufacturing company's website. She was interested in Auditing, Quality Assurance, Regulatory, and Compliance positions.
38. On 3/28/17, the claimant searched for positions on a hospital's career website. She was interested in Auditing, Quality Assurance, Regulatory, and Compliance positions.
39. On 3/29/17, the claimant spoke with a Senior Consultant at a consulting firm. The Senior Consultant advised the claimant to do informational interviews and review a variety of job descriptions and job boards to evaluate the types of positions she was interested in.
40. On 3/30/17, the claimant spoke with a manager who works for [sic] most recent employer, and also spoke with former co-workers about getting a job and scheduling informational interviews. Her former manager and co-workers did not provide the claimant with any leads.
41. On 4/4/17, the claimant searched for positions on a pharmaceutical company's website. She was interested in Quality Assurance, Compliance, Regulatory, and Auditing positions.
42. On 4/5/17, the claimant searched for positions on a pharmaceutical company's website. She was interested in Quality Assurance, Compliance, Regulatory, and Auditing positions. She did not find any positions she believed she was qualified for.
43. On 4/6/17, the claimant searched for positions on a pharmaceutical company's website. She was interested in Quality Assurance, Compliance, Regulatory, and Auditing positions.
44. On 4/10/17, the claimant attended a Career Center Seminar and inquired about attending an MBTI workshop.
45. On 4/11/17, the claimant e-mailed a life sciences recruitment company and expressed interest in Auditing positions. She sent her resume to the company. The recruitment company replied to her e-mail, and asked for more details about what she was interested in.
46. The claimant replied, "I'm currently in the assessment stage in my job search, and I would be interested in looking over the job descriptions for Quality Assurance, Auditing, Compliance and Regulatory; still unsure what kind of job I want to target for, and I'm working on figuring that out first." The recruitment company did not reply to this e-mail.

47. On 4/12/17, the claimant attended a training options workshop at a Career Center. On 4/13/17, she received a resume critique and took an MBTI test.
48. On 4/14/17, the claimant spoke with the above ADGO, who asked for the claimant's resume, to set up future informational interviews. The claimant provided her resume to the ADGO.
49. On 4/18/17, the claimant attended an RESEA Review meeting at a Career Center. On 4/19/17, the claimant received MBTI test results at a Career Center. On 4/21/17, the claimant attended a networking event and spoke with individuals who work on clinical trials, and who work as consultants, and in Quality Assurance positions.
50. On 4/25/17, the claimant spoke with a career transition services provider about her resume and how to change it.
51. On 4/27/17, the claimant contacted a consulting company and received assistance with formatting her resume.
52. On 4/28/17, the claimant participated in a Self-Assessment Option workshop at a Career Center. She took different tests to figure out the types of jobs best match her personality.
53. On 4/30/17, the claimant spoke with the above ADGO, who asked for the claimant's resume to set up future informational interviews. The claimant, again, provided her resume to the ADGO.
54. On 5/3/17, the claimant reviewed job listings on her most recent employer's career website. She was interested in Auditing, Quality Assurance, Regulatory, and Compliance positions.
55. On 5/4/17, the claimant re-took the MBTI test at a Career Center.
56. On 5/7/17, the claimant spoke with an Accountant at a telecommunications company and found there were no open positions, and that the company was moving. The claimant received the Accountant's contact information through the above ADGO.
57. On 5/10/17, the claimant searched online for Quality Assurance positions at a research and manufacturing company that provides services to the pharmaceutical and biotechnology industries.
58. On 5/13/17, the claimant spoke with a former roommate who is an after-school teacher. This individual studied nursing, then started working as an after-school teacher. The claimant asked her former roommate about her position and what one must do to become a teacher.

59. On 5/15/17, the claimant searched for Quality Assurance and Auditing positions online at a consulting firm. She found that the Auditing positions required previous experience at a large consulting firm.
60. On 5/16/17, the claimant searched online for a Quality Assurance position at a pharmaceutical company.
61. On 5/20/17, the claimant spoke with the above ADGO, who gave the claimant contact information for informational interviews. She did not participate in any informational interviews, as one contact was on medical leave. The claimant does not recall why she did not have an informational interview with the other contact.
62. On 5/22/17, the claimant searched for jobs online on a research and development organization's career website. On 5/24/17, the claimant attended an introductory online skills assessment workshop at a Career Center.
63. On 5/27/17, the claimant spoke with an individual who previously worked for a non-profit organization, who later earned a Certified Nursing Assistant certificate, and started working as a Home Health Aide. The claimant spoke with this individual because she is interested in nursing.
64. On 5/29/17, the claimant searched online for jobs on a health insurance company website. On 5/31/17, the claimant searched online for jobs on a different health insurance company website.
65. On 6/3/17, the claimant searched online for jobs at a health technology company. She searched for Quality Assurance positions. She found Engineering positions.
66. On 6/5/17, the claimant searched for Quality Assurance positions on a pharmaceutical company's career website. She found jobs that required laboratory skills she did not have.
67. On 6/6/17, the claimant searched for Quality Assurance positions at a pharmaceutical company, online.
68. On 6/8/17, the claimant spoke with the Associate Director of IRM Governance and Operations Support at a pharmaceutical company and reiterated her interest in participating in informational interviews.
69. On 6/12/17, the claimant searched for jobs online with a biomedical company. She found open Quality Assurance positions that required previous clinical monitoring experience. The claimant felt there were no positions she could apply for.

70. On 6/14/17, the claimant looked for jobs online on a pharmaceutical company's website. She found that many positions required a PhD.
71. On 6/17/17, the claimant spoke with her friend's boyfriend, who is a Patient Care Assistant at a [City A] hospital, about his position. She did not look for jobs on that hospital's website that day.
72. On 6/19/17, the claimant sent an updated resume to the life sciences recruitment company employee she contacted on 4/11/17, to be considered for future open positions.
73. On 6/21/17, the claimant posted her resume on monster.com, and made it visible to potential employers. She applied for a Clinical Trial Operations Manager position at a pharmaceutical company on 6/23/17.
74. The claimant found open Research Assistant positions while searching for jobs on hospital websites, between 3/5/17 and 6/22/17. She did not fill out any Research Assistant job applications, nor did she submit her resume to potential employers to be considered for a Research Assistant position, because she was interested in a Quality Assurance position.
75. On 6/26/17, the claimant e-mailed the above ADGO after the ADGO requested her resume for an informational interview. The claimant provided her resume to the ADGO.
76. The claimant did not participate in any informational interviews with any contacts provided by the ADGO.
77. On 6/27/17, the claimant submitted her resume to another pharmaceutical company and asked to be considered for future positions.
78. On 6/28/17, the claimant spoke with a recruiting manager at a scientific recruitment company about Quality Assurance positions, and the recruiting manager told the claimant she would keep the claimant updated.
79. On 7/5/17, the claimant searched for positions on a pharmaceutical company's career website. She was interested in Auditing, Quality Assurance, Regulatory, and Compliance positions.
80. On 7/7/17, the claimant posted her resume to a job board website for individuals looking for jobs in the pharmaceutical industry.
81. On 7/8/17, the claimant reviewed job listings online at a clinical research organization that helps pharmaceutical companies connect with hospitals. She did not find any positions she believed she was eligible to apply for.

82. On 7/10/17, the claimant reviewed job listings on a health sciences research organization's career website. On 7/11/17, the claimant searched for positions at a health insurance company, online.
83. On 7/13/17, the claimant spoke with a former neighbor, who gave her the contact information of individuals who work in Quality Assurance.
84. The claimant was approved for the Training Opportunities Program for the weeks beginning 7/16/17 to 8/26/17 and was not required to look for work during that time.
85. The claimant earned a certificate after attending the above Quality Systems Training Program. While attending the training program, she learned about quality standards and regulations, lean, and six sigma, and about inspection and corrective action.
86. The claimant searched for positions in County [A], in [City B], [City C], [City D], and in the North Shore, and surrounding cities and towns, from 3/5/17, to mid-to-late August 2017, when she expanded her geographical search area to [City A] and [City E], per advice from her Career Counselor.
87. On 8/28/17, the claimant applied for an Investigator-initiated Research Associate position with a pharmaceutical company.
88. The claimant believed she complied with required work search protocol as described in the above DUA and Career Center publications, as described on UI Online, and as described by Career Center personnel, during the above claim.

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 conclusion is free from error of law. Upon such review, the Board adopts the review examiner's consolidated findings of fact and deems them to be supported by substantial and credible evidence. As discussed below, we conclude that the claimant has shown that she met the requirements of G.L. c. 151A, § 24(b), for the period of time at issue.

In her initial decision, the review examiner denied benefits pursuant to G.L. c. 151A, § 24(b). That section of law provides, in part, the following:

[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 section of law. Following the initial hearing, the review examiner concluded that the claimant had failed to meet only the actively seeking work portion. *See* Consolidated Findings of Fact # 9. That is the part of the law which we address here.

Consolidated Findings of Fact ## 31 through 71 address the period of time before us. They show that the claimant was making efforts to become re-employed. We note that, during this period of time, the claimant did not actually apply to many jobs. While applying for work is important, this is not the only type of work search effort which meets the agency's standards. *See* DUA Service Representative Handbook, § 1050(A); Consolidated Finding of Fact # 22. *But see* Evancho v. Dir. of Division of Employment Security, 375 Mass. 280, 282 (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). We need not repeat all of the findings here. It suffices to say that her work search efforts are adequate to show that she was undertaking a course of action which would reasonably result in her re-employment.

We, therefore, conclude as a matter of law that the review examiner's decision to deny benefits is not supported by substantial and credible evidence and free from error of law, because, as stated in the consolidated findings of fact, the claimant has met the requirement to be able, available for, and actively searching for work within the meaning of G.L. c. 151A, § 24(b).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the period beginning March 5, 2017, through June 17, 2017.

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 24, 2019



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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