

Claimant's work search log, which shows three job searches on three separate days each week, establishes that he met the work search requirements of G.L. c. 151A, § 24(b).

**Board of Review
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Issue ID: 0022 2467 69

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Allison E. Williams, 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 reverse.

The claimant separated from employment and was approved for regular as well as extended benefits under G.L. c. 151A, § 30(c) (Section 30). However, in a determination issued on July 6, 2017, the DUA revoked his approval for Section 30 benefits, because he had failed to start his approved training program, and disqualified him from receiving regular unemployment benefits until he showed that he was capable of, available for, and actively seeking work, as required under 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 determination and denied benefits in a decision rendered on September 29, 2017. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant had failed to show that he was actively searching for work, 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, and the claimant's appeal, we remanded the case to the review examiner to consider the claimant's work search log, a copy of which was filed with his appeal to the Board. Following a remand hearing, the review examiner issued her consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's original conclusion that the claimant failed to show that he actively searched for work within the meaning of G.L. c. 151A, § 24(b), 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 a new claim for unemployment benefits on 5/2/17.
2. During the weeks-beginning 6/25/17 through week ending 7/29/17, the claimant was capable of and available for full time work.
3. During these weeks the claimant did make an active search of work. He searched three days a week online for delivery driver positions. (Remand Exhibit # 2)
4. The claimant worked most recently as an Overnight Staff.

Credibility Assessment:

The claimant's testimony at the original hearing that he had made an active search for work during the period in question is deemed credible since he provided his work search logs for these weeks. The claimant had been asked to provide the work search logs after the original hearing held on 9/25/17. The Review Examiner never received the work search logs before the date agreed to by the parties. The claimant provided a copy of the fax transmittal sheet to support his appeal to the Board that he had faxed the logs in as requested. (Remand Exhibit # 2)

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 original 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. However, in light of the new evidence and consolidated findings, we reject the review examiner's original legal conclusion that the claimant did not meet the work search requirements of G.L. c. 151A, § 24(b), as outlined below.

The present case asks us to consider whether, during the period June 25, 2017 through July 29, 2017, the claimant met the requirements of 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

Had the claimant actually participated in the training program, which had been approved for Section 30 benefits, he would have been entitled to both unemployment benefits and an exemption from the obligation under G.L. c. 151A, § 24(b), to be capable of, available for, and actively seeking work during the weeks that he was in training. *See* G.L. c. 151A, § 24(c). He lost this exemption when he did not start the training and his approval for Section 30 benefits was revoked. The only question before us is whether the claimant has presented sufficient

evidence to prove that he was capable of, available for, and actively seeking work during the relevant period.

Consolidated Finding # 2 provides that the claimant was capable of and available for full-time work from June 25, 2017, through July 29, 2017. Consolidated Finding # 3 finds that the claimant actively searched for work. This finding is supported by a work search log, which finally made its way before the review examiner, and which shows that the claimant searched for three jobs per week on three separate days each week during the weeks at issue. This evidence satisfies the DUA's active work search requirements. See DUA Service Representative Handbook, § 1050(A).

We, therefore, conclude as a matter of law that 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 June 25, 2017, through July 29, 2017, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - February 26, 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)**

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.

AB/rh