

An adjunct professor who was to return to work within 4 weeks, and who nonetheless conducted seven work search activities on two days, made adequate efforts to meet the work search requirements of G.L. c. 151A, § 24(b).

**Board of Review
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Issue ID: 0022 8362 47

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Rorie Brennan, a review examiner of the Department of Unemployment Assistance (DUA), to deny unemployment benefits for the week beginning August 20, 2017. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant filed a claim for unemployment benefits with the DUA, and the claim was determined to be effective June 11, 2017. On September 13, 2017, the DUA sent the claimant a Notice of Disqualification, informing her that she was not eligible to receive benefits for the week beginning August 20, 2017. 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 October 21, 2017.

Benefits were denied after the review examiner determined that the claimant had not actively sought work during the week beginning August 20, 2017, and, thus, she 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 accepted the claimant's application for review and remanded the case to the review examiner to take additional evidence regarding the claimant's return to work in the fall of 2017. 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 before the Board is whether the review examiner's conclusion that the claimant is disqualified from receiving benefits for the week beginning August 20, 2017, is supported by substantial and credible evidence and is free from error of law, where the claimant knew around the middle of the summer that she was going to return to work for the fall 2017 semester at two different schools as an adjunct professor.

Findings of Fact

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

1. On 06/15/17, the claimant filed a claim for unemployment benefits with an effective date of 06/11/17.
2. The claimant is an adjunct professor.
3. On 08/29/17, the claimant returned to work at one college; on 09/05/17, the claimant returned to work at a second college.
4. The claimant learned she was going to return to work in the fall of 2017 “midsummer.”
5. The claimant was offered part time adjunct professor positions at two different colleges for the fall of 2017.
6. For the one week period 08/20/17 through 08/26/17, the claimant had no medical or physical issues that restricted her ability to work.
7. For the one week period 08/20/17 through 08/26/17, the claimant was available to work full time.
8. For the one week period 08/20/17 through 08/26/17, the claimant looked for work on two days.
9. On 08/23/17, the claimant conducted 5 work search activities.
10. On 08/24/17, the claimant conducted two work search activities by emailing contacts about potential employment opportunities.
11. When certifying her claim for the week 08/20/17 through 08/26/17, the claimant reported that she looked for work on one day and included a work search log that showed the five work search activities conducted on 08/23/17.
12. On 09/13/17, the local office sent the claimant a Notice of Disqualification stating she was not eligible for benefits for the one week period beginning 08/20/17 through 08/26/17 because she did not meet the work search requirements of Section 24(b) of the Law.

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. 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 more fully below, we conclude that the claimant is not subject to disqualification for the week 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

Under this section of law, the claimant has the burden to show that she meets the requirements laid out in the statute. She must be able to work, available for work, and actively seeking work in each week that she claims benefits.

In this case, the review examiner found that the claimant was able to work full-time and was available to work full-time for the one week at issue, the week beginning August 20, 2017. The main issue is whether the claimant actively sought work that week. Generally, 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 decision, the review examiner appears to have applied the DUA’s “three and three” guideline, which includes a requirement that a claimant search for work on three different days during a week. This guideline is a well-known “rule of thumb” that is useful to apply in the vast majority of unemployment cases. *See* DUA Service Representative Handbook, § 1050(A). However, it is not unbending. Rigid adherence to the policy in all circumstances can create inequities and unreasonable interpretations of Chapter 151A, which must be construed liberally in aid of the unemployed worker. *See* G.L. c. 151A, § 74.¹

Here, as of August 20, 2017, the claimant knew that she was going to be returning to work at two schools of higher education. *See* Consolidated Findings of Fact ##2, 4, and 5. Given that she was going to return to work so soon, the DUA does not require that a person be actively seeking work. *See* DUA Service Representative Handbook, § 1051.² Moreover, the review examiner found that the claimant searched for work on two days and conducted a total of seven work search activities. *See* Consolidated Findings of Fact ##8 through 10. She further testified that she was preparing for the courses she was going to teach in the fall, 2017 semester and that she is constantly looking for work, given the fluid, unpredictable, and inconsistent work of an adjunct professor.³ In light of the timing of the week (just prior to the claimant’s return to work as an adjunct professor), the DUA’s general policy lifting the work search requirement for claimants who are imminently going back to work, and the efforts the claimant made during the week at issue to look for work, we conclude that the disqualification in this case is incorrect. The claimant’s efforts to maintain and obtain work are apparent from the record and the findings, and

¹ For another case in which the Board found that the unusual circumstances of a claimant’s profession allowed for less rigid adherence to the “three and three” guideline, *see* Board of Review Decision 0018 3756 36 (June 14, 2016) (since ballet dancer work was so specialized and scarce, the claimant’s efforts were sufficient to show active work search, although he did not meet three and three requirement each week). Board of Review Decision 0018 3756 36 is an unpublished decision, available upon request. For privacy reasons, identifying information is redacted.

² While we recognize that waiving the work search requirement under these circumstances is not authorized by Chapter 151A or any regulation, the Board has accepted this policy as being a sensible and practical interpretation of G.L. c. 151A, § 24(b).

³ We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. *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).

this is sufficient to meet the requirements of G.L. c. 151A, § 24(b), and the policy laid out in Section 1005(C) of the DUA Service Representative Handbook.

We, therefore, conclude as a matter of law that the review examiner's decision denying benefits for the week beginning August 20, 2017, is not supported by substantial and credible evidence or free from error of law, because the claimant's efforts at searching for work, coupled with her return to work dates, show that she met the unemployment law's work search requirements.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning August 20, 2017.

BOSTON, MASSACHUSETTS
DATE OF DECISION - February 27, 2018



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.

SF/rh