

After remand, the claimant produced evidence that she searched for work several times a week in a range of suitable jobs for a diverse field of employers. She is eligible for benefits under G.L. c. 151A, § 24(b).

**Board of Review
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Issue ID: 0025 1598 07

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 unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant separated from employment on March 20, 2018. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on April 26, 2018. 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 from April 1 through November 10, 2018, in a decision rendered on November 21, 2018. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant had failed to establish that she was actively seeking work, 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 remanded the case to the review examiner to afford the claimant an opportunity to present more detailed evidence of her work search efforts. The claimant attended the remand hearing and, 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, after remand, the review examiner's original decision disqualifying the claimant from receiving benefits under G.L. c. 151A, § 24(b), due to her failure to demonstrate an active search for new employment, is supported by substantial and credible evidence and is free from error of law in light of the claimant's more detailed work search evidence now in the record.

Findings of Fact

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

1. The claimant has been attending Bunker Hill College since 2006. She is in the Criminal Justice program.
2. The claimant was working full time and going to school full time from January 10, 2018 until March 20, 2018, when her employer laid her off.
3. The claimant filed her 2018-01 claim for unemployment benefits on April 7, 2018, effective April 1, 2018.
4. In the Spring of 2018, the claimant was taking 12 credits, her class schedule was:
 - a. Monday and Wednesday 1 p.m. to 3 p.m. and 6 p.m. to 8:45 p.m.
 - b. Tuesdays and Thursdays 9:30 a.m. to 10:15 a.m.
 - c. One online course, 3 hours a day, 4 days a week.
5. The claimant had leukemia but it has been in remission for 2 years.
6. The claimant has ADHD and PTSD.
7. The claimant has two children, ages 8 and 13. Her mother watches them when the claimant is in school during hours the children are not themselves in school
8. The claimant stated on her fact finding questionnaire, April 7, 2018, that she was not able, available or actively seeking work full time, because she was in school and had health issues. She did so because her ADHD makes it difficult for [sic] to complete questionnaires like this correctly.
9. The claimant stated during a telephone fact-finding interview taken on April 24, 2018 that she would be able to work full time while in school.
10. Since April 1, 2018, the claimant has been applying mostly for jobs as an executive administrative assistant, which was her last position. Prior to that position, she worked as a scheduling coordinator and has therefore applied for jobs in this capacity as well. The claimant has worked as a customer service representative and has therefore been applying for work in the guest services field. In addition, she has experience as a manager and has therefore applied for some management positions. She has also applied for positions as an Administrative Assistant and a receptionist.
11. Most of the claimant's experience is in the healthcare field so she has focused her work search on these fields. She has also been studying Criminal Justice and has, therefore, also been looking for administrative work in this field.
12. The claimant has been looking for work through networking.

13. Since April 1, 2018, the claimant has looked for work 3-4 days each week.
14. The claimant has signed up with the following online job search engines:
 - a. Ensure Jobs.net
 - b. Jobs to Careers (Job Alert)
 - c. Glassdoor
 - d. Nexxt Smart Match
 - e. Career Builder Jobs
 - f. Healthcare Job Site
 - g. I hire hospitality
15. The sites listed in the prior fact send the claimant job listings at least once a week. The claimant reviews these listings. If she finds something that is a good match, she either will click on that job listing to apply, or go to the employer's "brick and mortar" location to apply in person. Her preference is to go in person.
16. The claimant has also engaged in general browser web search[es] under the subjects [City A] Jobs, as well as going to the sites for [Company A] and [Company B] to check their open job listings.
17. The week starting April 1, 2018, the claimant applied for at least one job, as an Executive Assistant.
18. The week starting April 8, 2018, the claimant applied for at least one job, [as] a receptionist.
19. The week starting April 15, 2018, the claimant applied for at least one job, as an executive assistant.
20. The week starting April 22, 2018, the claimant applied for at least one job, as a senior executive assistant.
21. The week starting April 29, 2018, the claimant applied for at least one job, as a guest services manager.
22. The week starting May 6, 2018, the claimant applied for at least one job, as a front desk manager.
23. The week starting May 13, 2018, the claimant applied for at least one job, as a guest services manager.
24. The week starting May 20, 2018, the claimant applied for at least two jobs, one in airport operations and another as a scheduling coordinator II.

25. The week starting May 27, 2018, the claimant applied for at least one job, as a scheduling coordinator.
26. The week starting June 3, 2018, the claimant applied for at least one job, as a scheduling coordinator.
27. The week starting June 10, 2018, the claimant applied for at least one job, as a medical scheduling coordinator.
28. The week starting June 17, 2018, the claimant applied for at least one job, as a scheduling coordinator.
29. The week starting June 24, 2018, the claimant applied for at least one job, as a scheduling coordinator I.
30. The week starting July 1, 2018, the claimant applied for at least one job, as an office and executive assistant.
31. The week starting July 8, 2018, the claimant applied for at least one job, as an executive assistant.
32. The week starting July 15, 2018, the claimant applied for at least one job, as an executive assistant.
33. The week starting July 22, 2018, the claimant applied for at least one job, as an executive assistant.
34. The week starting July 29, 2018, the claimant applied for at least one job, as an administrative assistant II.
35. The week starting August 5, 2018, the claimant applied for at least one job, as an administrative assistant.
36. The week starting August 12, 2018, the claimant applied for at least one job, as a senior administrative assistant.
37. The week starting August 19, 2018, the claimant applied for at least one job, as an administrative assistant.
38. The week starting August 26, 2018, the claimant applied for at least one job, as an administrative assistant.
39. The week starting September 2, 2018, the claimant applied for at least one job, as an administrative assistant.
40. The week starting September 9, 2018, the claimant applied for at least one job, as an administrative assistant.

41. The week starting September 16, 2018, the claimant applied for at least two jobs, with the same employer, one as an administrative assistant and one executive assistant.
42. The week starting September 23, 2018, the claimant applied for at least one job, as an administrative assistant.
43. The week starting September 30, 2018, the claimant applied for at least one job, as an administrative assistant.
44. The week starting October 7, 2018, the claimant applied for at least two jobs, one as an executive administrative assistant and one as an administrative assistant.
45. The week starting October 14, 2018, the claimant applied for at least one job, as an executive assistant.
46. The week starting October 21, 2018, the claimant applied for at least one job, an executive assistant.
47. The week starting October 28 2018, the claimant applied for at least one job, doing quality assurance work.
48. The week starting November 4, 2018, the claimant applied online for at least one job, as an administrative assistant.
49. The week starting November 11, 2018, the claimant applied online for at least one job, as an administrative assistant.
50. On April 26, 2018, DUA issued Notice of Disqualification, 0025 1598 07-01, stating that the claimant was disqualified under Section 24(b) of the law for the period beginning April 1, 2018 and for an indefinite period of time thereafter, until she meets the requirements of the law.

Credibility Assessment:

The claimant's testimony was found to be very credible. She was very careful not to provide any testimony if she was not confident that she could provide clear and accurate information.

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. We further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented. However, as discussed more fully below, the consolidated findings do not support the review examiner's original legal conclusion that the claimant is disqualified under G.L. c. 151A, § 24(b).

The relevant provision of law is 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

The express terms of the above statutory provision do not state what is expected by "actively seeking work." Pursuant to G.L. 151A, § 24(b), an individual seeking unemployment benefits is required to show that he has made a reasonable good faith effort to find new employment. Evancho v. Dir. of Division of Employment Security, 375 Mass. 280, 282 (1978). In terms of what that means, the Supreme Judicial Court shows deference to the DUA. See Grand v. Dir. of Division of Employment Security, 393 Mass. 477, 481 (1984) (giving deference to the DUA Director in setting the work search standards for unemployment compensation). The DUA expects individuals 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).

At the original hearing, the claimant was not prepared with detailed evidence of her work search efforts because she did not keep a log. We remanded to afford her an opportunity to present such additional evidence from her other records. As a result of that additional hearing, the consolidated findings now reflect a robust work search from the beginning of her claim through the relevant period. Specifically, from April 1 through November 10, 2018, the claimant has looked for work three to four days a week. Consolidated Finding # 13. She has used a number of different online job search web sites and has engaged in networking. *See* Consolidated Findings ## 12 and 14. She has looked for several different types of positions that are commensurate with her past work experience and applied to at least one position with a range of employers in each week, either online or in person. *See* Consolidated Findings ## 10–11 and 15–49. In short, the record shows a course of action which is reasonably designed to obtain re-employment in suitable work.

Additionally, the review examiner's consolidated findings show that the claimant was capable and available for full-time work, even while still in school full-time. She has a history of working full-time and going to school full-time, and she has day-care arrangements for her children. *See* Consolidated Findings ## 2, 4, and 7.

We, therefore, conclude as a matter of law that the claimant has met the requirements under G.L. c. 151A, § 24(b), to be capable of, available, and actively seeking work.

The review examiner's decision is reversed. The claimant is entitled to receive benefits from April 1 through November 10, 2018, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 19, 2019



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.

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