

**Board of Review
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Member
Michael J. Albano
Member**

Issue ID: 0027 2428 38

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 the claimant one week of benefits following her separation from employment on September 17, 2018. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

On October 20, 2018, the agency initially determined that the claimant was not entitled to unemployment benefits for this week. The claimant appealed and attended the hearing. In a decision rendered on November 29, 2018, the review examiner affirmed the agency determination, concluding that the claimant was not able, available, and actively searching for work during the week ending September 29, 2018, because she was ill, and, thus, she was disqualified under G.L. c. 151A, § 24(b). The Board accepted 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 decision to disqualify the claimant pursuant to G.L. c. 151A, § 24(b), is based on substantial evidence.

However, the review examiner failed to consider another provision within G.L. c. 151A, § 24, which states:

No individual shall be considered ineligible for benefits because of failure to comply with the provisions of said clause (b) if such failure is due to an illness or disability which occurs during a period of unemployment after he has filed a claim and registered for work, and has been determined to be otherwise eligible; provided, that no work which would have been considered suitable but for such illness or disability was offered to him after he became ill or disabled; provided further, that the exception granted under this paragraph shall apply to three weeks only within a benefit year.

Thus, while the claimant was neither capable of nor available for full-time work during the week at issue, she is entitled to one of the three weeks of benefits permitted for claimants who become ill during their benefit year.

The review examiner's decision is, therefore, reversed. The claimant is entitled to receive benefits for the week ending September 29, 2018.

The Board notes that the claimant has presented new medical documentation, which may affect her eligibility as of November 30, 2018. Based upon this new information, DUA has been asked to investigate and issue a new determination as to whether the claimant met the requirements of G.L. c. 151A, § 24(b), during the period beginning November 30, 2018.

BOSTON, MASSACHUSETTS
DATE OF DECISION - January 29, 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.

JPC/rh