

**Although the claimant made few, if any, resume or application submissions to obtain more work, she searched on online job boards, attended an interview, networked, and looked at an in-person board at her college over the course of the three weeks at issue. These contacts are sufficient to satisfy the work search requirements of G.L. c. 151A, § 24(b).**

**Board of Review  
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**Issue ID: 0027 3994 96**

## **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 for the period from September 2, 2018, through September 22, 2018. 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 July 8, 2018. On October 24, 2018, the DUA sent the claimant a Notice of Disqualification, informing her that she was ineligible for benefits for the period beginning September 2, 2018, through September 29, 2018. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by the claimant, the review examiner modified the agency's initial determination and denied benefits only for the three weeks ending September 8, September 15, and September 22, 2018, in a decision rendered on December 8, 2018.

Benefits were denied for those three weeks after the review examiner determined that the claimant was not actively seeking work, and, thus, 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 work search. 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 decision to deny benefits for the three weeks ending September 8, September 15, and September 22, 2018, pursuant to 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 assessment are set forth below in their entirety:

1. The claimant filed a new claim for unemployment benefits on 7/19/18.
2. The claimant began school at Mount Wachusett College on 9/4/18. The claimant is a full time student. She attends in person classes two nights a week and takes 3 online classes.
3. The claimant was capable of and available to work full time while in school. The claimant would have rearranged her school schedule around her full time work or she would [have] quit to accept full time work if she was unable to do so.
4. The claimant certified for benefits for the weeks beginning 9/2/18 through 9/22/18. (Remand Exhibit 5, pages 1-7)
5. The claimant offered no other work search related information for the period at issue (emails, confirmations of submission of resume, etc.)
6. During the week ending 9/8/18, the claimant looked for any job she was qualified for within a certain distance close enough to her home on 9/3/18, and 9/5/18. She did not save any job postings from these days nor did she submit any resumes. She networked with a friend from [Employer A] for part time work on 9/7/18.
7. During the week-ending 9/15/18, the claimant looked for any job she was qualified for within a certain distance close enough to her home on 9/11/18, and 9/14/18. She did not save any job postings from these days nor did she submit any resumes. On 9/10/18 the claimant contacted [Employer A] seeking employment. She checked the school listing board at Mount Wachusett on 9/13/18.
8. During week-ending 9/22/18, the claimant looked for any job she was qualified for within a certain distance close enough to her home on 9/19/18, and 9/21/18. She did not save any job postings from these days nor did she submit any resumes. The claimant also networked on 9/20/18 and 9/18/18.
9. The claimant was offered a part time job with [Employer A] which she accepted. As of 1/31/19, she is no longer working there.
10. The claimant had worked more recently as Front Office Help full time, earning \$16.00 an hour.

Credibility Assessment:

The claimant contended that she was making an active search for work during the period in question. She testified that she did not apply for any positions or submit any resumes during this time other than the job with [Employer A] because she did not qualify for any other positions or the positions she did find were not close enough to her home. It is not plausible that there were no positions for the claimant to apply for during this time given the major search engines she claims to have searched. The weight of the evidence suggests that the claimant made one contact during a three-week period. Despite being offered part time employment, only making contact with one employer a week is not making an active search. She failed to provide any evidence of any submissions of her resume or any email confirmations that she was actively searching. In addition, the claimant acknowledged she is only reaching out to employers that are within a certain distance to her home, limiting the scope of her search.

### 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 to the review examiner's credibility assessment, we reject her conclusion that it was not "plausible that there were no positions for the claimant to apply for during this time." We do accept the summary of the evidence provided in the assessment. However, in light of the review examiner's findings of fact and the evidence in the record, we do not adopt the suggestions in the assessment that the claimant did not meet her burden to show an adequate work search.

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. The review examiner concluded that the claimant had failed to meet only the actively seeking work portion. *See Consolidated Finding of Fact # 3.* That is the part of the law which we address here.

As an initial matter, we note that the review examiner found that the claimant was searching for work "within a certain distance close enough to her home." *See Consolidated Findings of Fact ## 6-8.* In her credibility assessment, the review examiner noted that the claimant was seeking employment "within a certain distance to her home, limiting the scope of her search." The review examiner never asked the claimant how far she was willing to travel to work. She never inquired as to what effect a distance restriction had on the claimant's work search. Thus, denying benefits on this vague point would be unsupported and an error of law. We assume from the claimant's testimony and the review examiner's actual findings that the claimant was

limiting herself to locations which were within a reasonable commuting distance from her home. The law requires nothing more of the claimant.

As to the actual job search contacts, we believe that the claimant has shown that she was conducting a search which was “likely to lead to the claimant’s obtaining and accepting” suitable work. *See* DUA Service Representative Handbook Section 1050(A). Each week, the claimant was looking for work she was qualified to perform on several days during the week. In addition, during the week ending September 8, 2018, she also networked with a friend regarding work at a donut shop. During the week ending September 15, 2018, the claimant directly contacted the donut shop and interviewed for a position.<sup>1</sup> Moreover, she checked a job listing board at her college. During the week ending September 22, 2018, she networked on several days of the week in addition to checking the online job listings.

We certainly recognize that the claimant did not submit resumes or apply to many jobs. *Cf. 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). Such efforts may have increased the likelihood that the claimant would obtain new employment. However, her efforts to find a suitable job were found to be credible by the review examiner. We conclude that her efforts were sufficient, over a relatively short period of time, to satisfy her burden under the law.

We, therefore, conclude as a matter of law that the review examiner’s decision to deny benefits for the weeks ending September 8, September 15, and September 22, 2018, was not supported by substantial and credible evidence or free from error of law, because the claimant showed that she was able, available, and actively seeking work for those weeks, as required under G.L. c. 151A, § 24(b).

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<sup>1</sup> 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).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the period September 2, 2018, through September 22, 2018, if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION – April 24, 2019**



Charlene A. Stawicki, Esq.  
Member



Michael J. Albano  
Member

Chairman Paul T. Fitzgerald, Esq. 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](http://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