

Where claimant attended a wedding from Wednesday through Saturday, a majority of the week, she is deemed to have been unavailable for work under G.L. c. 151A, § 24(b), and is not eligible for benefits. However, because she returned from the wedding the following Tuesday, she is deemed to have been unavailable only a minority of the week and was, therefore, eligible for benefits. Because the claimant was not in partial unemployment and did not turn down work during this week, it was improper to impose lost time charges.

**Board of Review
19 Staniford St., 4th Floor
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member
Michael J. Albano
Member**

Issue ID: 0027 7214 67

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 we affirm in part and reverse in part.

The claimant separated from employment and filed a claim for unemployment benefits with the DUA, effective April 15, 2018, which was approved. However, in a determination issued on November 27, 2018, the DUA disqualified the claimant from receiving benefits from November 4–17, 2018, and imposed a lost time charge of \$389.76. 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, denying benefits from November 4–10, 2018, and imposing a lost time charge of \$129.92 for the week of November 11–17, 2018, in a decision rendered on March 15, 2019. We accepted the claimant’s application for review.

Benefits were denied after the review examiner determined that the claimant was unavailable for work and, thus, she was disqualified under G.L. c. 151A, § 24(b). Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner’s decision, and the claimant’s appeal.

The issue before the Board is whether the review examiner’s decision, which concluded that, because the claimant was attending a wedding in Canada, she was unavailable for work and disqualified for one week and subject to a lost time charge for the following week, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant's appeal is from a determination which denied her benefits under Section 24(b) of the Law for the period beginning 11/4/2018 through 11/17/2018 with a lost time charge of \$389.76.
2. The claimant left the United States on 11/7/2018 and returned to Massachusetts on 11/13/2018.
3. The claimant traveled to Canada to attend a wedding.
4. The claimant has a weekly benefit rate of \$203.00.

Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the 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 findings of fact and deems them to be supported by substantial and credible evidence. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant is subject to any lost time charges for the second week of benefits at issue.

The review examiner rendered his decision under 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

Under this section of law, claimants are expected to be capable of, available for, and actively seeking full-time work.¹ Starting Wednesday of the week beginning November 4, 2018, the claimant was travelling to and attending a wedding in Canada. She did not return until Tuesday, November 13, 2018. Lacking any evidence to the contrary, the review examiner reasonably inferred that, during that time away for the wedding, the claimant was not making herself available for work, as required by G.L. c. 151A, § 24(b).

The review examiner disqualified the claimant from receiving any benefits during the week of November 4–10, 2018, and he imposed a lost time charge for 16 hours during the week of November 11–17, 2018. In the first week, where the claimant was away for four days from Wednesday, November 7 through Saturday, November 10, 2018, we agree that the claimant should be disqualified from receiving benefits, because she was unavailable for work for the

¹ There are exceptions for individuals participating in an approved training program under G.L. c. 151A, § 30(c), or who are receiving Trade Re-adjustment Assistance benefits under the Trade Act of 1974, as amended. *See* G.L. c. 151A, § 24(c), and 19 U.S.C. § 2296 (d)(1)(A). There are also a limited number of circumstances under which individuals may limit their availability to part-time work. *See* 430 CMR 4.45. The claimant's activities during the week at issue, however, do not fall within any of the exceptions.

majority of the week.² However, we do not agree with the review examiner's imposition of a lost time charge in the second week.

The statutory authority for imposing lost time charges appears under G.L. c. 151A, § 1(r)(1), which pertains to individuals in partial unemployment. As we have held, this subsection grants the DUA authority to impose lost time charges only to claimants who are in partial unemployment who have turned down available work. *See* Board of Review Decision 0019 5816 39 (Feb. 27, 2017). In this case, the claimant was in total unemployment, not partial unemployment. *See* G.L. c. 151A, § 1(r)(2). Since she was back from her trip on Tuesday, November 13, 2018, she is deemed to have been available for work during the remaining four days, or a majority of the second week, and she is not subject to disqualification.

We, therefore, conclude as a matter of law that the claimant was unavailable for work within the meaning of G.L. c. 151A, § 24(b), only during the period that she spent the majority of the week attending a wedding.³

The review examiner's decision is affirmed in part and reversed in part. The claimant is denied benefits for the week beginning November 4, 2018. The claimant is entitled to receive benefits for the week beginning November 11, 2018, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 20, 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)**

² It is important to note that the claimant is deemed to have been unavailable for work because she was attending a wedding, not because she travelled to Canada. Had she gone to Canada for job search purposes, she would not have automatically been disqualified any more than if she had simply travelled out of state for a job interview. This is because of Canada's participation in the Interstate Benefit Payment Plan. *See* 430 CMR 4.05(7).

³ The only issue addressed during the hearing was the claimant's unavailability for work. This appears to have been brought to the agency's attention when the claimant completed a fact-finding questionnaire for a separate late-appeal issue. *See* Exhibits 3 and 4 and Issue ID # 0027 8912 41. Absent any indication in the record that the claimant was incapable of working or that she did not actively search for work during the two weeks at issue, and we see none, she is deemed to have satisfied the other requirements of G.L. c. 151A, § 24(b).

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