

The claimant, a union member, who was temporarily out of work due to inclement weather is not disqualified under the work search requirement of G.L. c. 151A, § 24(b), where his union restricts him from obtaining non-union work and he complied with all requirements of his union regarding what to do during periods when there is no work due to temporary, weather-related reasons.

**Board of Review
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Issue ID: 0029 9043 49

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 week beginning March 3, 2019. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant stopped performing work for his employer on February 20, 2019. He filed a claim for unemployment benefits with the DUA, and the claim was determined to be effective February 17, 2019. On March 13, 2019, the DUA sent the claimant a Notice of Disqualification, informing him that he was not eligible to receive benefits for the week beginning March 3, 2019. 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 April 11, 2019.

Benefits were denied after the review examiner determined that the claimant had not actively searched for work during the week at issue 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 relative to whether the claimant's work search was conducted in accordance with any rules imposed upon him by his labor union. 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, which concluded that the claimant was not actively searching for work during the week of March 3, 2019, as required by G.L. c. 151A, § 24(b), is supported by substantial and credible evidence and is free from error of law, where the claimant complied with all of his union rules regarding obtaining work during periods of layoff.

Findings of Fact

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

1. On 02/20/19, the claimant filed a claim for unemployment benefits with an effective date of 02/17/19.
2. The claimant is a member of the [Union A].
3. The [Union A] restricts the claimant from obtaining work outside of the union.
4. The claimant is not allowed to perform non-union roofing work during periods of time in which there is no work available for him through the union.
5. If the claimant accepted non-union work, he would be subject to expulsion from the union.
6. The claimant is only required to contact the union in the event of a permanent lay off or separation. The claimant is not required to contact the union during a temporary lay off due to inclement weather.
7. In the event of a permanent lay off or separation, the claimant must first contact the union. The union allows employees to self-solicit through approximately 24 other union shops in the event of a permanent separation.
8. The claimant has worked as a roofing foreman for the same company since 1996.
9. The claimant was laid off due to lack of work on 02/20/19.
10. The claimant was not given a definite recall date at the time of separation as it is dependent upon the weather.
11. For the period beginning 03/03/19 through 03/09/19, the claimant, when certifying for benefits, stated "no" when answering the question: During the week listed above: "Did you look for work?"
12. For the period beginning 03/03/19 through 03/09/19, the claimant contacted the manager of the company by phone on 5 different days during that week to see if they had work available.
13. The employer did not have work available at any point.
14. The claimant did not contact the union for work.

15. The claimant was a member in good standing with the union during the week ending 03/09/19.
16. The claimant did not make any other work search contacts other than with the instant employer.
17. The claimant answered “no” because he wasn’t looking for work with any other employers other than the instant employer who had laid him off.
18. For the period beginning 03/03/19 through 03/09/19, the claimant did not have any physical or mental issues that restricted his ability to work full time.
19. For the period beginning 03/03/19 through 03/09/19, the claimant was available for work Monday through Friday, variable shifts.
20. On 03/13/19, the DUA issued the claimant a Notice of Disqualification determining that he did not meet the minimum work search requirements and therefore, was not entitled to receive benefits for the period beginning 03/03/19 through 03/09/19.

Credibility Assessment:

The claimant’s testimony regarding his requirements with the union were corroborated by his witness, who is a union representative. The claimant’s testimony is accepted as credible.

Ruling of the Board

In accordance with our statutory obligation, we review the record and 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. We further believe that the review examiner’s credibility assessment is reasonable in relation to the evidence presented. As discussed more fully below, we disagree with the review examiner’s legal conclusion that the claimant is disqualified from receiving benefits for the week beginning March 3, 2019.

In order to be eligible for unemployment benefits, a claimant must be capable of, available for, and actively seeking work for each week in which benefits are claimed. This requirement is taken from 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 G.L. c. 151A, § 24(b), claimants are expected to conduct a *bona fide* work search by contacting a variety of employers using a variety of methods.¹ In this case, the review examiner concluded that the claimant's only work search contacts were with the company he has worked at since 1996. A member of a labor union may satisfy the requirements of G.L. c. 151A, § 24(b), by notifying the union of their unemployment, staying in good standing with the union, and adhering to any other requirements imposed by the union. This exception to the normal requirements of G.L. c. 151A, § 24(b), applies to claimants whose unions limit them to obtaining work via a union hiring hall or otherwise prohibit them from performing non-union work. *See* DUA Service Representative Handbook § 1052 (§ 1052).

In this case, the claimant's union restricts him from obtaining work outside the union. Consolidated Findings of Fact ## 3–5. He is only required to contact the union hall for more work when he is permanently laid off from his job. Consolidated Finding of Fact # 6. He does not need to contact the union hall when he is temporarily not working due to inclement weather. Consolidated Finding of Fact # 6. The claimant was not working during the week of March 3, 2019, because of inclement weather. *See* Consolidated Finding of Fact # 10.² Thus, the claimant filed his claim for unemployment benefits not due to an overall lack of work. There was still work to do. However, he was unable to perform it during the week of March 3, 2019, due to the weather. In such circumstances, the claimant was not required to contact his union hall for more work. He took reasonable steps by contacting the company to see if it was time to return to work. Consolidated Findings of Fact # 12. Because he did not need to contact the union hall for work during the temporary, weather-related period of no work, he maintained active contact with the company he was performing services for, he was a member in good standing with his union, and he was not allowed to obtain other work due to his union rules, we conclude that the claimant has met the requirements of the DUA's work search policy as laid out in § 1052.

We, therefore, conclude as a matter of law that the review examiner's decision to deny benefits for the week beginning March 3, 2019, is not supported by substantial and credible evidence or free from error of law, because the claimant, a union member restricted from obtaining work outside his union during a period of temporary layoff, has shown that he is not subject to disqualification under G.L. c. 151A, § 24(b).

¹ The only issue to be decided here is whether the claimant met the work search requirement of G.L. c. 151A, § 24(b). There was no indication in the record the claimant was not able to work or available to work during the week at issue.

² The review examiner did not make an explicit finding of fact regarding the reason why the claimant stopped working as of February 20, 2019. However, Consolidated Finding of Fact # 10 implies that the reason was related to weather.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning March 3, 2019, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION – June 20, 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

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