

Where the review examiner did not find credible the claimant's assertions that he had been searching for work, and the claimant did not present documentation to show his work search efforts, benefits are properly denied under G.L. c. 151A, § 24(b).

**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: 0031 4815 99

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 beginning March 10, 2019, through June 8, 2019. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

The claimant filed a claim for unemployment benefits with the DUA, and the claim was determined to be effective March 10, 2019. On July 10, 2019, the DUA sent the claimant a Notice of Disqualification, informing him that he was not eligible to receive unemployment benefits pursuant to G.L. c. 151A, § 24(b), because he was not able to work. 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 September 20, 2019.

Benefits were denied after the review examiner determined that, while he was capable of working during the period in question, the claimant had not shown that he was actively seeking work, and, thus, he 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 efforts. 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 from March 10, 2019, through June 8, 2019, pursuant to G.L. c. 151A, § 24(b), is supported by substantial and credible evidence and is free from error of law, where the review examiner did not credit the claimant's testimony that he was actively seeking work during that period of time.

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 3/12/19.
2. The claimant had gone out on a medical leave in March of 2018. The claimant requested a leave due to stress. He was experiencing severe anxiety and could not perform his duties due to harassment by his Superior.
3. The claimant had a doctor appointment with his doctor on 7/30/19, the physician's statement provided by the claimant's doctor indicates that during the weeks-beginning 3/10/19 through 6/8/19, the claimant was capable of full time work.
4. The claimant was also available for full time work during the weeks in question.
5. The claimant worked most recently as an Executive Officer of a Community College. The claimant applied for retirement in June of 2019. His retirement became effective at the end of June 2019.
6. The claimant did not make an active search for work during the weeks beginning 3/10/19 through 6/8/19. The claimant did not provide any work search logs for this period of time in question.

Credibility Assessment:

The claimant's contention that he was actively seeking full time employment during the weeks beginning 3/10/19 through 6/8/19 is not deemed credible. The claimant was given the opportunity to provide work search logs both at the August 15, 2019, hearing and the Remand hearing held on November 1, 2019, however he testified on both occasions that he did not have any logs to provide. In addition, the claimant was asked at the Remand hearing to provide work search information for the searches he certified to for each of the weeks in question, however, again he was not able to give any specific information with regards to the employers he contacted in search of work.

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 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. As discussed more fully below, we conclude that the claimant is not eligible for unemployment benefits from March 10, 2019, through June 8, 2019.

The issue before the Board is whether the claimant meets the requirements of 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, the claimant has the burden to show that he meets each requirement that he be capable of, available for, and actively seeking suitable work. *See* Evancho v. Dir. of Division of Employment Security, 375 Mass. 280, 282–283 (1978).

Initially, the DUA determined that the claimant was not capable of working. The claimant appealed that determination to the hearings department, who subsequently found that the claimant was able to work from March 10, 2019, through June 8, 2019. *See* Exhibit # 9 and Consolidated Finding of Fact # 3. The claimant’s availability for full-time work has never been in question. Consolidated Finding of Fact # 4.

During the first hearing, the review examiner asked the claimant to submit work search logs. Doing so would have assisted the review examiner with determining whether, under the above-cited section of law, the claimant had been actively seeking work for the period being addressed in the DUA’s original determination.¹ The claimant, however, failed to submit any work search logs. The review examiner then issued her decision to deny benefits, solely on the basis that the claimant was not actively seeking work. In his appeal to the Board of Review, the claimant again argued that he had been able to work from March 10, 2019, through June 8, 2019. Because the Board was not convinced that the claimant had a fair opportunity to testify regarding his work search efforts, we remanded the case back to the review examiner specifically to discuss the claimant’s work search.

At the remand hearing, the claimant did not offer any documentation to support his testimony that he had been actively seeking work during the period at issue. The claimant testified that he had been looking for work, including meeting with people in his industry, attending job fairs, talking with recruiters, and visiting institutions of higher learning to inquire about positions. The review examiner did not find that he made these efforts. She noted that the claimant failed to submit a work search log, and he was not able to give details about his work search activities.²

It is important to note the Board’s role and standard of review at this stage of the administrative process. The “inquiry by the board of review into questions of fact, in cases in which it does not conduct an evidentiary hearing, is limited . . . to determining whether the review examiner’s findings are supported by substantial evidence.” Dir. of Division of Employment Security v. Fingerman, 378 Mass. 461, 463 (1979). Since the Board did not hold a hearing in this matter, we cannot make findings of fact. We also cannot set aside the review examiner’s credibility

¹ Although the agency’s original determination was issued under the capability requirement of G.L. c. 151A, § 24(b), we see no error in the review examiner inquiring about the claimant’s work search efforts, especially where such an inquiry may determine whether the claimant is eligible for benefits under G.L. c. 151A, § 24(b).

² The claimant testified that he lost, or threw out, his work search logs when he was moving his residence in July of 2019.

determination, unless it is unreasonable or unsupported by the evidence before her. In unemployment proceedings, “[t]he responsibility for choosing between conflicting evidence and for assessing credibility rests with the examiner.” Zirelli v. Dir. of Division of Employment Security, 394 Mass. 229, 231 (1985). In other words, even if the Board could have viewed the evidence differently, and even if the Board may have made findings of fact different from the review examiner’s findings, we cannot substitute our judgment for the review examiner’s view of the evidence.

As indicated above, we have accepted the review examiner’s findings of fact and credibility assessment. Given the claimant’s testimony and the lack of work search documentation, we cannot conclude that the review examiner’s credibility assessment or findings are unreasonable. The claimant’s testimony, while seemingly sincere, was not supported by any corroborating evidence. A review examiner is not required to believe self-serving, unsupported evidence, even if it is uncontroverted by other evidence. McDonald v. Dir. of Division of Employment Security, 396 Mass. 468, 470 (1986). Even the claimant’s weekly certifications, in which he included some information about his work search, lack detail and specificity. *See Exhibit # 3.*

We, therefore, conclude as a matter of law that the review examiner’s decision to deny benefits pursuant to G.L. c. 151A, § 24(b), for the period of March 10, 2019, through June 8, 2019, is supported by substantial and credible evidence and free from error of law, because the review examiner was reasonable in concluding that the claimant did not carry his burden to show that he made an active work search for the period in question.

The review examiner’s decision is affirmed. The claimant is denied benefits for the period beginning March 10, 2019, through June 8, 2019.

BOSTON, MASSACHUSETTS
DATE OF DECISION – November 6, 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