

Where the claimant separated from her most recent employment for urgent, compelling, and necessitous reasons, lack of childcare, and this is the same reason she is limiting her benefit year availability to part time work, she may not be disqualified from receiving benefits pursuant to 430 CMR 4.45(1)(b).

**Board of Review
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Issue ID: 0031 5075 63

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 reverse.

After separating from her employment, the claimant filed a claim for unemployment benefits with the DUA, which was determined to be effective June 30, 2019. She then certified for benefits on that claim. On August 2, 2019, the DUA issued a Notice of Disqualification, informing the claimant that she was indefinitely ineligible for benefits beginning June 30, 2019. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by the claimant via telephone, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on August 30, 2019. We accept the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not capable of full-time work and, thus, 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 conclusion that the claimant is not eligible to receive benefits 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 are set forth below in their entirety:

1. At the time of the hearing, the claimant's had two children, aged four years old and two years old.

2. At the time of the hearing, the claimant was 35 weeks pregnant with a due date of October 3, 2019.
3. The claimant worked full-time for her most recent employer, a clothing warehouse, as a packer. She worked Monday through Friday, from 7am to 3:30pm.
4. While employed full time, the claimant's grandmother provided childcare while the claimant worked.
5. In or about January 2019, the claimant's grandmother became sick and needed care at home. After she became sick, the grandmother was unable to provide childcare for the claimant's children.
6. The father of the claimant's children was unable to provide childcare for their children because he worked full time.
7. The claimant did not have friends and family members available to watch her children because they all worked.
8. On an unknown date, the claimant applied for a childcare voucher from the state of Massachusetts and was denied because she did not have income.
9. On an unknown date, the claimant attempted to enroll her four year old into a head start program, PACE. The claimant's child was denied enrollment for an unknown reason.
10. In or about February 2019, the claimant became separated from her most recent employer.
11. The claimant opened a new claim for unemployment benefits, effective for June 30, 2019.
12. The claimant did not work part-time during her base period.
13. For the week ending July 6, 2019 and subsequent weeks, the claimant had no physical limitations or medical issues to prevent her from working.
14. For the week ending July 6, 2019 and subsequent weeks, the claimant limited her availability to work to part time because she did not have full time childcare.
15. For the week ending July 6, 2019 and subsequent weeks, the claimant looked for work on indeed.com and by visiting potential employers in person. The claimant looked for work as a cashier and retail associate.
16. For the week ending July 6, 2019 and subsequent weeks, the claimant looked for work on three days of each week.

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. After 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 believe that the review examiner's findings of fact compel the conclusion that the claimant is entitled to benefits under G.L. c. 151A, § 24(b), because the claimant falls within a regulatory exception that allows her to limit her availability for work during her benefit year.

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 this section of law, the burden of proof is on the claimant. See Evancho v. Dir. of Division of Employment Security, 375 Mass. 280, 282-283 (1978) (“the burden rests on the unemployed person to show that [her] continued unemployment is not due to [her] own lack of diligence”). If the claimant fails to show that she meets any one of the three requirements described in G.L. c. 151A, § 24(b), she is disqualified from receiving benefits until such time as she meets all of the requirements.

Claimants generally are required to be available for *full-time* work in each week that they request unemployment benefits. However, there are several exceptions to this general rule. The review examiner concluded that the claimant did not meet the exception described in 430 CMR 4.45(1)(a), as the claimant had no prior history of part-time work during her base period. The review examiner failed to consider 430 CMR 4.45(1), which provides in pertinent part as follows:

[An individual otherwise eligible for benefits may limit his/her availability for work during the benefit year to part-time employment provided, that the individual] . . .
(b) establishes to the satisfaction of the commissioner that the reasons for leaving his or her employment were for such an urgent, compelling, and necessitous nature as to make his or her separation involuntary; and establishes to the satisfaction of the commissioner that the same or related urgent, compelling, and necessitous reasons require the individual to limit availability for work during the benefit year to part-time employment; and such limitation does not effectively remove the individual from the labor force

In this case, the claimant candidly conceded that she is not available for full-time work, but contended that she is available for part-time work due to a lack of childcare for her young children. The review examiner credited the claimant's testimony that she has been available and has actively sought part-time work since she opened her claim effective June 30, 2019. While the findings of fact do not state why the claimant separated from her most recent employment, the findings suggest

that it was due to the same childcare problems that continue to restrict the claimant's availability to work. A review of DUA records confirms that DUA previously determined that the claimant's separation from employment was involuntary due to urgent, compelling, and necessitous reasons, specifically stating, "[t]he claimant left work to care for his/her children knowing that a request for a leave of absence was not an option." See Issue Identification Number 0031 4816 67. Thus, the same urgent, compelling, and necessitous reason for the claimant's separation from her prior job is causing the claimant to restrict her availability to part-time work during her benefit year. Pursuant to the above regulation, the claimant may limit herself to part-time work.

We, therefore, conclude as a matter of law that the claimant met all of the requirements of G.L. c. 151A, § 24(b). The review examiner's decision is reversed. The claimant is entitled to receive benefits beginning June 30, 2019, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION – September 27, 2019



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

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.

JRK/jv