

Claimant submitted work search logs showing she was actively searching for work from 1/5/20 to 2/15/20. She was available for full time work starting 1/5/20 but was not physically able to work until 1/17/20. Therefore, she did not meet all requirements of G.L. c. 151A, § 24(b) until 1/17/20.

**Board of Review
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Issue ID: 0033 2548 35

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 reverse in part and affirm in part.

The claimant underwent reconstructive foot surgery and, as a result, was unable to return to her work for approximately eight to ten weeks. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on January 23, 2020. 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 indefinitely beginning January 5, 2020, in a decision rendered on February 29, 2020. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined the claimant failed to show that she was actively seeking work for the period between January 5, 2020, and February 15, 2020, 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 remanded the case to the review examiner to consider additional evidence submitted by the claimant. 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 entitled to benefits for the period beginning January 5, 2020, 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. The claimant possesses an Associate's Degree in Criminal Justice.

2. The claimant worked as a Banquet/Cater Server; Restaurant Server; Esthetician; Massage Therapist; and Administrative Assistant in the past.
3. The claimant is employed as a Catering Supervisor for a food services provider that contracts with educational institutions.
4. The claimant also works per diem for a company that provides Cater Server and Coat Check work.
5. The claimant underwent reconstructive surgery on her foot on 1/10/20.
6. The food services provider allowed the claimant to perform light duty work before her surgery.
7. The claimant's physician gave her a note stating she is not to return to work in her current position for the food services company for eight to ten weeks. The anticipated date she may return to work with that employer is 3/10/20.
8. The claimant was first physically capable of performing work that does not require her to bear weight on the above foot, on 1/17/20, when she got a scooter.
9. The claimant has been available to work forty hours per week since 1/5/20.
10. The claimant searched for work on four separate days between 1/5/20 and 1/11/20. She searched for Esthetician positions and searched for Counselor and Office Administrator positions at a university. She also inquired about transferring to another position within the food services company she currently works for.
11. The claimant searched for work each day between 1/12/20 and 1/18/20. She searched for Facial Therapist, Laser Technician, and Esthetician positions, and inquired about transferring to another position within the food services company she currently works for. She also searched for commercial rental property.
12. The claimant searched for work on five separate days between 1/19/20 and 1/25/20. She inquired about transferring to another position within the food services company she already works for. She also searched for Massage/Aesthetics freelance work and searched for medical office space. She contacted a car dealership and expressed interest in a Front Desk Agent position, and searched LinkedIn restaurant groups and Esthetician groups for available work.
13. The claimant searched for work on three separate days between 1/26/20 to 2/1/20. She contacted two separate temporary staffing agencies regarding three different Administrative Assistant positions. She also searched for medical office space and Massage/Aesthetics freelance work.

14. The claimant searched for work each day between 2/2/20 and 2/8/20. She searched ZipRecruiter and found the following positions to apply for: Assistant Operations Manager, Senior Administrative Assistant, Office Manager, and Administrative Assistant. She also searched for positions at a university in the [City A] area, including Assistant Manager Dining Services, and Credit and Collections Associate. She contacted a temporary staffing agency regarding an Administrative Assistant position and searched on Indeed and Hospitality Online for office positions and food services positions, respectively.
15. The claimant searched for work each day between 2/9/20 and 2/15/20. She searched Indeed and LinkedIn and found the following positions to apply for: Office Administration, Esthetician, Administrative Assistant, Secretary/Office Administrator, and Esthetician Instructor. She also followed up with a temporary staffing agency regarding available work. She inquired about transferring to another position within the food services company she currently works for. She also contacted an entertainment complex regarding a Special Events Assistant position, Special Events Manager position, and Assistant to the General Manager position.
16. The claimant actively searched for work between 1/5/20 and 2/15/20.

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 ultimate 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, with the exception of Consolidated Finding # 16, which is a legal conclusion and not a finding of fact.¹ However, as discussed more fully below, we reject the part of the review examiner's legal conclusion stating that the claimant was ineligible for benefits because she had not shown she was actively seeking work during the period between January 5, 2020, and February 15, 2020.

Our decision in this case is governed by 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

We now consider whether the claimant was capable of, available for, and actively seeking full-time work as of January 5, 2020.

¹ Since the case is now at the Board of Review level, the Board makes conclusions of law. See Dir. of Division of Employment Security v. Fingerman, 378 Mass. 461, 463–464 (1979).

First, we must consider whether the evidence shows that the claimant was physically capable of working. Although the claimant underwent reconstructive foot surgery on January 10, 2020, the review examiner found that the claimant became capable of performing work that did not require her to bear weight on her foot on January 17, 2020. Consolidated Finding # 8. We see nothing in the record that detracts from this finding. Consolidated Findings ## 10, 11, 12, 13, 14, and 15 indicate the claimant applied for office and administrative positions as well as positions in aesthetics. The claimant's work history suggests that these positions would be considered suitable employment. *See* Consolidated Finding # 2. Further, we see nothing in the record that indicates the claimant's physical limitations would preclude her from working in such positions and, therefore see no reason to question the claimant's ability to perform these jobs. As such, we conclude the claimant became physically capable of performing full time work on January 17, 2020.

The claimant must also show that she was actively searching for work during the relevant period. Consolidated Findings ## 10, 11, 12, 13, 14, and 15 provide that the claimant performed at least three work search activities in each week between January 5, 2020, and February 15, 2020. In light of this evidence and the review examiner's findings, we conclude that the claimant has shown that she was actively seeking within the meaning of G.L. c. 151A, § 24(b), starting the week of January 5, 2020.

Finally, the claimant must show that she was available for full-time work. In this case, the review examiner found that the claimant was available for full time work starting January 5, 2020. Consolidated Finding # 9. We see nothing in the record to suggest otherwise.

We, therefore, conclude as a matter of law that the claimant has established that she was capable of, available for, and actively seeking work within the meaning of G.L. c. 151A, § 24(b), beginning January 17, 2020. The claimant is denied benefits for the weeks beginning January 5, 2020, and January 12, 2020. She is entitled to receive benefits for the week beginning January 19, 2020, and for subsequent weeks if otherwise eligible.



BOSTON, MASSACHUSETTS

Stawicki, Esq.

DATE OF DECISION - May 12, 2020

Charlene A.

Member



Michael J. Albano

Member

Chairman Paul T. Fitzgerald, Esq. did not participate in this decision.0

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS
STATE DISTRICT COURT**

(See Section 42, Chapter 151A, General Laws Enclosed)

The last day to appeal this decision to a Massachusetts District Court is ordinarily thirty days from the mail date on the first page of this decision. However, due to the current COVID-19 (coronavirus) pandemic, the 30-day appeal period does not begin until June 1, 2020². If the thirtieth day falls on a Saturday, Sunday, or legal holiday, the last day to appeal this decision is the next business day 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.

LSW/rh

² See Supreme Judicial Court's Updated Order Regarding Court Operations Under the Exigent Circumstances Created by the COVID-19 (CORONAVIRUS) Pandemic, dated 4-27-20.