

Unemployed roofer engaged in an active work search within the meaning of G.L. c. 151A, § 24(b), as he demonstrated aggressive efforts to find work in his usual skilled occupation during a seasonal slowdown.

**Board of Review
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Issue ID: 0033 4588 09

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.

The claimant separated from his position with the employer on November 20, 2019. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on January 17, 2020. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the claimant, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on March 26, 2020. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not engaged in an active work search 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 decision, which concluded that the claimant had effectively removed himself from the labor market by limiting the scope of his work search, 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. In late November, 2019, the claimant was seasonally laid off from his employer, a roofing and siding company, for which his father is the sole owner and president, due to a lack of work.
2. The claimant filed a claim for unemployment benefits with the Department of Unemployment Assistance, (DUA) with an effective date of December 29, 2019.

3. Prior to filing for benefits, the claimant worked as a roofer and project manager for his father's roofing company, where he has worked for the last 30 years.
4. In the claimant's initial response to a request for information from the DUA, the claimant indicated he was not looking for a full-time job with other employers because he wanted to be ready for the next season or sooner with his employer. The claimant also stated he would be returning to full-time work on April 1, 2020.
5. Since the week beginning December 29, 2019, the claimant had no restrictions on his physical and mental ability to work.
6. Since the week beginning December 29, 2019, the claimant placed no limitations on his availability to work a full-time schedule.
7. Since the week beginning December 29, 2019, the claimant looked for full-time roofing jobs within the roofing industry. The claimant performed work search activities at least 3 times per week. He met with employers in person, and left messages with roofing companies asking for available work.
8. Since the week beginning December 29, 2019, the claimant has not looked for any type of work in any other industry other than the roofing industry.
9. Since the week beginning December 29, 2019, the claimant was not offered any 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 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 failed to engage in an active and reasonable work search within the meaning of the unemployment statute.

Because the review examiner concluded the claimant was not actively engaging in a reasonable work search, we analyze his eligibility for benefits 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

Pursuant to G.L. c. 151A, § 24(b), an individual seeking unemployment benefits is required to show that he/she has made a reasonable good faith effort to find new employment. Russo v. Dir. of the Division of Employment Security, 377 Mass. 645, 647 (1979), *citing* Evancho v. Dir. of the

Division of Employment Security, 375 Mass. 280, 282 (1978). The Massachusetts Supreme Judicial Court (SJC) has long held that whether an unemployed person is unable to obtain work is “largely a question of fact as to which the burden rests on the unemployed person to show that his continued unemployment is not due to his own lack of diligence.” Evancho, 375 Mass. at 282–283; *see also* Conley v. Dir. of the Division of Employment Security, 340 Mass. 315, 319 (1960) (six applications for work over approximately five-month period not an active work search).

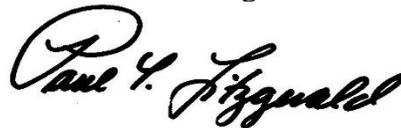
The DUA, for its part, requires that a “claimant must make an active and realistic search for work, taking steps that would be taken by a reasonable person in the claimant’s circumstances who was interested in obtaining work.” DUA Adjudication Handbook, Ch. 4, § 4A(1). In determining the reasonableness of a claimant’s work search, “[c]onsideration should be given to the customary methods of obtaining work in a claimant’s usual occupation or one for which the claimant is reasonably suited.” Id. We further note that under longstanding DUA’s policy, a “claimant is entitled to a reasonable period of time following a separation to find work in [his/her] customary occupation, provided such work exists within the area in which the claimant is seeking such work.” Id. at Ch. 4, § 4C(3). The reasonableness of such a time period “depends on the nature of work sought and the economic conditions in that particular job sector.” Id. Consequently, the more skilled a claimant’s job, or the more difficult the relevant economic conditions, the more time that may be required to obtain the suitable work. Id. If after a reasonable time period, little prospect of finding work in their usual occupation exists, claimants who continues to limit their work search and do not seek other suitable work, will be disqualified under § 24(b). *See* Farrar v. Dir. of Division of Employment Security. 324 Mass. 45 (1949).

The findings and record before us establish that the claimant engaged in the type of active and realistic work search contemplated under G.L. c. 151A, § 24(b), the relevant case law, and DUA policies. The claimant actively sought work as a roofer, the occupation for which he is most reasonably suited. In so doing, the claimant engaged in the customary methods of obtaining work as a roofer, namely contacting roofing contractors and subcontractors, both in person and by phone. Thus, the work steps undertaken by the claimant were reasonable given his circumstances and job skills. It also appears that the claimant provided the DUA with a detailed work search log, attesting to the diligence and consistency of his work search activities. Thus, we believe that the claimant in good faith undertook an active and realistic work search within the meaning of § 24(b).

We further note that, given both the skilled nature of the claimant’s usual occupation and the somewhat challenging economic condition of finding roofing work during a seasonal slowdown, the claimant was entitled to a reasonable period of time to return to his roofing occupation.

We, therefore, conclude as a matter of law that claimant actively and realistic sought work in his usual occupation and thus fulfilled the work search provisions of G.L. c. 151A, § 24(b).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning December 29, 2019, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 10, 2020



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

**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 May 4, 2020¹. 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.

PTF/rh

¹ See Supreme Judicial Court's Order Regarding Court Operations Under the Exigent Circumstances Created by the COVID-19 (CORONAVIRUS) Pandemic, dated 4-1-20.