

The agency allows claimants a limited work search in their customary field for a reasonable period of time, so claimant's three work search contacts during the week in question satisfies the work search requirement even though it is in a field that offers little work during the winter months.

**Board of Review
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Issue ID: 0033 4969 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 filed a claim for unemployment benefits with an effective date of January 12, 2020. On February 5, 2020, the agency issued a Notice of Disqualification stating that the claimant was ineligible for benefits during the week beginning January 12, 2020, because he did not establish that he met the capability, availability and work search requirements under G.L. c. 151A, § 24(b). 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 March 26, 2020. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant, although capable and available for work, did not establish that he was actively searching for 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 remanded the case to the review examiner to obtain additional evidence pertaining to the claimant's work search. The claimant participated in 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 did not establish he actively searched for work during the week beginning January 12, 2020, as required under G.L. c. 151A, § 24(b), is supported by substantial and credible evidence and is free from error of law, where, after remand, the review examiner found that the claimant made three work search contacts that week.

Findings of Fact

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

1. The claimant's 2020-01 claim is effective January 12, 2020.
2. The week ending January 18, 2020, the claimant had no physical, emotional or cognitive issues, which would have prevented him from working full-time.
3. The week ending January 18, 2020, the claimant had no issues which would have made him unavailable to work full-time.
4. The claimant is a mason. This is the only type of work he seeks.
5. The week ending January 18, 2020, the claimant applied, by telephone, to three masonry businesses:
 - a. [Company A] in [Town A], RI;
 - b. [Company B] Masonry, in [Town B], RI; and
 - c. [Company C] Masonry, in [Town C], RI.
6. Each of the above companies stated that they did not have any work available for the claimant.
7. There is a slowdown in masonry work during the winter months due to weather conditions not being conducive to laying brick and mortar outdoors. It is possible to do masonry work if the work area can be protected from the elements.
8. When the claimant certified his claim for the week ending January 18, 2019, he stated that he was available for work and looked for work but was unable to work. He stated that he was unable to work because he did not have a job to which he could report, not because of any physical, emotional or cognitive issue he was dealing with during that week.
9. On February 5, 2020, DUA issued Notice of Disqualification 0033 4969 09-01, stating that the claimant was disqualified under Section 24(b) of the law for the week ending January 18, 2020.

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. After such review, the Board adopts the review examiner's consolidated findings of fact except as follows. We set aside the portion of Consolidated Finding of Fact # 8, which refers to the week ending January 18, 2019, as the remainder of the consolidated findings show that the week at issue here is the week ending January 18, 2020. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, since the consolidated findings reflect that the claimant searched for work during the week at issue, we reject the review

examiner's original legal conclusion that the claimant did not meet the work search requirements under G.L. c. 151A, § 24(b).

G.L. c. 151A, § 24(b), 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 or she has made a reasonable good faith effort to find new employment. Russo v. Dir. of Division of Employment Security, 377 Mass. 645, 647 (1979), *citing* Evancho v. Dir. of 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 Division of Employment Security, 340 Mass. 315, 319 (1960) (six applications for work over approximately five-month period not an active work search).

In her original decision, the review examiner concluded that, although the claimant established that he was capable of working and available for work during the week ending January 18, 2020, he did not establish that he actively searched for work during that week. The review examiner arrived at this conclusion because she did not have access to the claimant's work search records for that week. We remanded this case to the review examiner to allow the claimant an opportunity to provide testimony regarding the work search records he submitted with his appeal to the Board of Review. After the remand hearing, the review examiner found that the claimant applied for work with three employers during the week ending January 18, 2020. The review examiner further found that the claimant is a mason and the jobs he applied for were all in masonry, a job field which typically slows down during the winter months.

The DUA 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). 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 G.L. c. 151A, § 24(b). Id., *citing* Farrar v. Dir. of Division of Employment Security, 324 Mass. 45 (1949).

The findings before us establish that, during the week at issue 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 mason, the occupation for which he is

most reasonably suited. In so doing, the claimant engaged in the customary methods of obtaining work as a mason, namely contacting three masonry contractors. Thus, the work steps undertaken by the claimant were reasonable given his circumstances and job skills.

We, therefore, conclude as a matter of law that the claimant met the capability, availability, and work search requirements under G.L. c. 151A, § 24(b), during the week ending January 18, 2020.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending January 18, 2020, if otherwise eligible.



BOSTON, MASSACHUSETTS

DATE OF DECISION - June 5, 2020

Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

Member Charlene A. Stawicki, Esq. did not participate in this decision.

**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 July 1, 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.

SVL/rh

¹ See Supreme Judicial Court's Second Updated Order Regarding Court Operations Under the Exigent Circumstances Created by the COVID-19 (coronavirus) Pandemic, dated 5-26-20.