

**Not eligible under G.L. c. 151A, §§ 29 and 1(r), during the period that the claimant was medically unable to work. However, once ready to work, the claimant was unable to return because schools were closed due to the COVID-19 pandemic and she had no childcare. Under DOL guidance and Massachusetts Emergency Regulations, the claimant did not have to accept suitable work if she had to care for a child who was at home because of COVID-19.**

**Board of Review  
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**Paul T. Fitzgerald, Esq.  
Chairman  
Charlene A. Stawicki, Esq.  
Member  
Michael J. Albano  
Member**

**Issue ID: 0033 5491 72**

### 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 the claimant benefits following her leave of absence from employment on September 22, 2019. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm in part and reverse in part.

On February 19, 2020, the agency initially determined that the claimant was not entitled to unemployment benefits. The claimant appealed, and both parties attended the hearing. In a decision rendered on March 26, 2020, the review examiner affirmed the agency determination, concluding that the claimant was not available for work, and, thus, she was disqualified under G.L. c. 151A, §§ 29 and 1(r). We accepted the claimant's application for review.

### Ruling of the Board

After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we conclude that the review examiner's decision to deny benefits from the beginning of the claimant's unemployment claim, effective January 19, 2020, through March 14, 2020, is based on substantial evidence and is free from any error of law affecting substantive rights. The record shows that, during this period of time, the claimant was not medically able to work and, therefore, was not in total or partial unemployment within the meaning of G.L. c. 151A, §§ 29 and 1(r).

Thereafter, the record shows that the claimant was medically able to work, beginning March 15, 2020. Moreover, at the time of the hearing, the parties provided undisputed testimony that she was about to return to work for the employer in a different position. The claimant's appeal states, however, that she has not been able to return to work, because the public schools are closed due to the COVID-19 pandemic, and that she must be home to care for her 11-year-old son. Pursuant to 430 CMR 22.04, Emergency Regulations promulgated in response to the COVID-19 pandemic, and guidance issued by the DUA, a claimant does not have to accept suitable work if she must care

for a child who is at home because of COVID-19. Under these circumstances, we decline to deny the claimant benefits once she became medically cleared to work.

The portion of the review examiner's decision to deny benefits from the effective date of her claim, January 19, 2020 through March 14, 2020, is affirmed. The portion of the review examiner's decision, which disqualified the claimant thereafter, is reversed. The claimant is entitled to receive benefits for the week beginning March 15, 2020, and for subsequent weeks if otherwise eligible.



Paul T.

**BOSTON, MASSACHUSETTS**

Fitzgerald, Esq.

**DATE OF DECISION - April 20, 2020**

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 May 4, 2020<sup>1</sup>. 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](http://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.

AB/rh

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