

**Claimant, who was obliged to remain out of work to self-quarantine for two weeks after returning from a vacation outside of the country, was entitled to benefits while he was out of work due to COVID-19 quarantine. However, the claimant was not eligible for benefits after his quarantine ended.**

**Board of Review  
19 Staniford St.  
Boston, MA 02114  
Phone: 617-626-6400  
Fax: 617-727-5874**

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

**Issue ID: 0035 6826 66**

### 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. We reverse and find the claimant eligible for benefits from March 22, 2020, through March 31, 2020. However, we affirm the denial of benefits beginning April 1, 2020.

The claimant filed a claim for unemployment benefits with the DUA on March 27, 2020, which was approved in a determination issued on April 22, 2020. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the employer, the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on July 21, 2020. We accepted the claimant's application for review.

Benefits were denied when the review examiner determined that the claimant was not in unemployment, where the employer had work available for him, but he remained out of work due to the need to quarantine and car issues, and, thus, was disqualified under G.L. c. 151A, §§ 29(a), 29(b), and 1(r). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we afforded the parties an opportunity to submit written reasons for agreeing or disagreeing with the decision. Only the claimant responded. Our decision is based upon our review of the entire record, as well as information available through the DUA's UI Online database.

The issue before the Board is whether the review examiner's decision, which concluded that claimant was not in unemployment when he declined available work because of quarantine and car issues, 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. The claimant works for the employer full-time and has not been separated from employment.
2. The claimant went on vacation outside of the country from 3/2/2020 through 3/16/2020.
3. The claimant was paid vacation pay while on vacation.
4. The claimant returned on 3/17/2020 and needed to quarantine for two weeks.
5. The employer had 40 hours of work available while the claimant quarantined.
6. The claimant did not have any additional vacation pay to use after 3/16/2020 and was not paid by the employer.
7. The claimant filed an unemployment claim which was established with an effective date of 3/21/2020 [sic].
8. The claimant was supposed to return to work full-time on 4/1/2020, however he did not return due to car issues.
9. The employer had full-time work available.
10. The claimant returned work on [sic] full-time on 4/6/2020 and has worked full-time hours each week since returning.

### 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 original conclusion is free from error of law. After such review, the Board adopts the review examiner's findings of fact except as follows.

In Finding of Fact # 7, the review examiner incorrectly found that the effective date of the claim is March 21, 2020. The effective date of this claim is March 22, 2020.

In Finding of Fact # 10, the review examiner found that the claimant returned to work on April 6, 2020, and has worked full-time hours every week since. We note that the employer's May 1, 2020, appeal conceded that the employer was shut down from April 21-24, 2020. See Exhibit # 4.<sup>1</sup> Thus, the claimant did not have full-time work available to him during the week of April 19 through April 25, 2020.

---

<sup>1</sup>The dates in April of 2020 when the employer closed, while not explicitly incorporated into the review examiner's findings, are part of the unchallenged evidence introduced at the hearing and placed in the record, and are thus properly referred to in our decision today. See Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, while we believe that the review examiner's findings of fact support the conclusion that the claimant was ineligible for benefits after March 31, 2020<sup>2</sup>, we believe that the claimant was eligible from March 22 through March 31, 2020, as outlined below.

To be eligible for unemployment benefits, the claimant must show that he was in a state of unemployment within the meaning of the statute. G.L. c. 151A, § 29 authorizes benefits to be paid to those in total or partial unemployment. Those terms are defined by G.L. c. 151A, § 1(r), which provides, in relevant part, as follows:

(1) "Partial unemployment", an individual shall be deemed to be in partial unemployment if in any week of less than full-time weekly schedule of work he has earned or has received aggregate remuneration in an amount which is less than the weekly benefit rate to which he would be entitled if totally unemployed during said week . . . .

(2) "Total unemployment", an individual shall be deemed to be in total unemployment in any week in which he performs no wage-earning services whatever, and for which he receives no remuneration, and in which, though capable and available for work, he is unable to obtain any suitable work.

Based on the employer's undisputed testimony, the review examiner found the claimant took a vacation out of the country and returned on March 16, 2020, but did not return to work until April 6, 2020. Where the review examiner found the employer had full-time work available and that the claimant failed to work, the review examiner disqualified him from benefits indefinitely because he was not in total or partial unemployment.

The review examiner's conclusion, however, failed to acknowledge that the claimant was out of work from March 17 through March 31, 2020, because he was required to self-quarantine due to concerns about COVID-19 after his return to the country.

To alleviate hardships caused by COVID-19, the DUA has promulgated emergency regulations setting forth circumstances where claimants may be eligible for unemployment benefits, even where employers have suitable work available. Pursuant to 430 CMR 23.05:

In determining whether work is suitable the department will consider whether a claimant has a condition that prevents the claimant from performing the essential functions of the job without a substantial risk to the claimant's health or safety. For the purposes of this section, "condition" includes, but is not limited to, an underlying medical or other condition that puts the claimant at increased risk for severe illness from COVID-19, a request to a claimant from an employer, a medical professional, a local health official, or any civil authority *that the claimant ... be isolated or quarantined as a consequence of COVID-19*, even if the claimant ... has not actually been diagnosed with COVID-19. (Emphasis added)

---

<sup>2</sup> Except, as noted above, for the week ending April 25, 2020, when the employer did not have full-time work available.

Where the claimant was required to self-quarantine after returning to this country due to concerns about possible COVID-19 exposure, he was relieved of the requirement to accept suitable work while he was in quarantine. Thus, we conclude, as a matter of law, that the claimant is eligible for benefits during the week ending March 28, 2020.

The claimant also missed part of the following week, since his quarantine continued through March 31, 2020. Had the claimant returned to work on April 1, he would have been in partial unemployment during the week ending April 4, 2020. However, rather than return to work on April 1, as scheduled, the claimant failed to return to work due to car issues. There is insufficient evidence to demonstrate that the claimant's car issues rendered the available work unsuitable. He remained obligated to accept this available work under G.L. c. 151A, §§ 29 and 1(r). Thus, the wages that the claimant would have earned had he worked those hours available to him are deducted from his weekly benefit amount for that week as lost time charges. The method for calculating a lost time charge is set forth in 430 CMR 2.02.

The employer testified the claimant normally worked a 40-hour week, and was paid \$14.65 per hour.<sup>3</sup> Where the claimant was expected to return for three eight-hour days from April 1 through April 3, he is subject to a lost time charge of \$351.60 (24 hours x \$14.65 = \$351.60). Thus, we conclude, as a matter of law, that the claimant is eligible for benefits during the week ending April 4, 2020, subject to a lost time charge of \$351.60.

As of April 6, 2020, the claimant resumed his full-time work for the employer. Thereafter, he was no longer in unemployment.

We note, however, that the claimant's appeal to the Board contends that the employer was closed during the week of April 19, 2020, due to possible COVID-19 exposure in the employer's workplace. The employer's appeal confirmed the shutdown. *See* Exhibit # 4. We also take administrative notice that the claimant did not certify for the week of April 19 through April 25, 2020.<sup>4</sup> If the claimant attempts to retroactively certify for that week, he would be subject to the requirements of G.L. c. 151A, § 39(b).

We, therefore, conclude as a matter of law that the claimant was in total unemployment from March 22 through March 28, 2020, and for the week of April 19 through April 25, 2020. He was in partial unemployment from March 29 through April 4, 2020. He was not in unemployment during the period April 5 through April 18, 2020, or after April 25, 2020.

The review examiner's decision is affirmed in part and reversed in part. The claimant is entitled to receive benefits for the week ending March 28, 2020. The claimant is entitled to receive benefits for the week ending April 4, 2020, subject to a lost time charge of \$351.60, pursuant to 430 CMR 2.02. If the claimant had certified for benefits for the week ending April 25, 2020, he would have been eligible for benefits that week.

---

<sup>3</sup>The claimant's compensation rate, while not explicitly incorporated into the review examiner's findings, is also part of the unchallenged evidence introduced at the hearing and placed in the record

<sup>4</sup> The claimant's weekly certifications in UI Online show that he certified for benefits for the weeks ending March 28, April 4, and April 11, 2020.

The claimant is denied benefits from April 5 through April 18, 2020, and from April 26, 2020, and for subsequent weeks when the employer has full-time work available to him.



**BOSTON, MASSACHUSETTS**

**DATE OF DECISION - August 25, 2020**

Paul T. Fitzgerald, Esq.  
Chairman



Charlene A. Stawicki, Esq.  
Member

Member Michael J. Albano 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 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](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.

JPCA/rh