

The claimant established through documentation that he is legally permitted to work in the United States and is, therefore, available for work under G.L. c. 151A, § 24(b).

**Board of Review
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Issue ID: 0035 8915 21

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 March 29, 2020. On September 18, 2020, the DUA issued a Notice of Disqualification providing that the claimant was not entitled to benefits because he had not established that he was legally permitted to work in the United States. 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 January 22, 2021. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant did not establish that he was available to work in the United States and, thus, was not entitled to benefits 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 on appeal is whether the review examiner's conclusion that the claimant did not establish that he was legally available for work under G.L. c. 151A, § 24(b), is supported by substantial and credible evidence and is free from error of law, where the claimant provided a copy of his permanent resident card to the DUA.

Findings of Fact

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

1. At all relevant times, the claimant is not a United States citizen.
2. The claimant filed for unemployment benefits with the Department of Unemployment Assistance (DUA) on March 29, 2020, with an effective date of March 29, 2020.

3. Prior to September 18, 2020, the DUA issued a request for information from the claimant, in order to determine the claimant's eligibility to receive unemployment benefits. The claimant was asked to submit a copy of his Social Security card (or other government document with the claimant's name and SSN); the claimant's Green card; Amnesty card; I-94 document or other document that showed the claimant was authorized to work in the United States; and photo identification, such as a Massachusetts Identification card, passport, or driver's license. The request for information had a deadline of 14 days of the issuance of the request.
4. The claimant did not submit any of the documents requested to the DUA by September 18, 2020.
5. On September 18, 2020, the DUA issued a Notice of Disqualification, disqualifying the claimant of benefits for failing to show he is legally permitted to work in the United States.
6. As of the hearing date, January 13, 2021, the claimant has not provided clear documents that would confirm that the claimant is authorized to work in the United States.
7. The claimant has a green card (or permanent residency card) issued by the United States Department of State with an expiration date of June 9, 2030.
8. As of the date of this decision, it is unknown whether the claimant is not authorized to work in the United States and has not submitted all documents requested by the DUA.

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. We reject Finding of Fact # 6, which states that the claimant has not provided documents establishing that he is authorized to work in the United States, and the portion of Finding of Fact # 8 that states it is unknown whether the claimant is authorized to work in the United States. We reject these findings in light of Finding of Fact # 7, which states that the claimant provided a permanent resident card issued by the United States Department of State, with an expiration date of June 9, 2030. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, we conclude that the totality of the evidence in the record establishes that the claimant is authorized to work in the United States.

The review examiner initially denied the claimant benefits pursuant to 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

Also relevant to the claimant's eligibility for benefits is G.L. c. 151A, § 25, which provides, in pertinent part, as follows:

[No waiting period shall be allowed and no benefits shall be paid to an individual under this chapter for] . . . (h) Any period . . . on the basis of services performed by an alien, unless such alien was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed

A claimant who certifies that he is not a citizen of the United States must show that he was in a satisfactory immigration status while he performed services for an employer, and that he is legally authorized to work during the benefit year.

After considering the claimant's testimony and reviewing the documents submitted at the hearing, the review examiner found that, although the claimant submitted a permanent resident card issued by the United States Department of State, with an expiration date of June 9, 2030, he had not established that he was authorized to work in the United States. We disagree with the review examiner's conclusion that the claimant had not established he was legally authorized to work in the United States.

We take administrative notice of the information contained in the UI Online system, which shows that the agency verified the claimant's permanent resident card, and that he is a lawful permanent resident who is authorized to permanently live and work in the United States as an immigrant. We further note that the claimant's permanent resident card shows that he became a resident of the United States on July 17, 2017.¹ Since the information in the UI Online system shows that the claimant's base period ran from January 1, 2019, to December 31, 2019, it is clear from the evidence in the record that he was legally able to work in the United States when he performed the work that qualified him monetarily for unemployment benefits. The evidence further establishes that he continued to be legally authorized to work in the United States during his claim's benefit year.

We, therefore, conclude as a matter of law that the claimant has been legally permitted to work in the United States since the start of the base period of his claim. He is, therefore, available for work under G.L. c. 151A, § 24(b).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending April 4, 2020, and for subsequent weeks, if otherwise eligible.

¹ The date the claimant became a resident, while not explicitly incorporated into the review examiner's findings, is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is 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).

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 30, 2021



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano did not participate in this decision.

If this decision disqualifies the claimant from receiving regular unemployment benefits, the claimant may be eligible to apply for Pandemic Unemployment Benefits (PUA). The claimant may contact the PUA call center at (877) 626-6800 and ask to speak to a Tier 2 PUA Supervisor.

**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

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