

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: 0039 8011 93

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 April 26, 2020. On August 26, 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 19, 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 legally available to work in the United States and, thus, was not entitled to benefits 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 authorization to work in the United States. The claimant participated in the remand hearing. Thereafter, the review examiner issued his consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue on appeal is whether the review examiner's decision, which concluded that the claimant did not establish 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 documentary evidence in the record after remand shows that the claimant is authorized to work in the United States.

Findings of Fact

The review examiner's consolidated 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 April 26, 2020, with an effective date of April 26, 2020.
3. On August 1, 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 August 14, 2020.
4. The claimant did not submit any documents to the DUA by August 14, 2020.
5. The claimant, at various times after August 14, 2020, submitted various documents to the DUA.
6. The claimant has a Social Security card, issued by the United States Social Security Administration, with the last four digits of his Social Security number as [XXXX].
7. The claimant has a Massachusetts Driver's License issued by the Massachusetts Registry of Motor Vehicles, with an expiration date of November 25, 2020.
8. The claimant has a temporary Massachusetts Driver's License, issued by the Massachusetts Registry of Motor Vehicles on February 2, 2021, with an expiration date of April 3, 2021.
9. The claimant has a Green card issued by the United States Department of State, with an expiration date of December 21, 2020.
10. On or about January 15, 2021, the claimant received a Notice of Action (I-797) from the United States Department of Homeland Security, with a notice date of January 12, 2021. The I-797 states that the claimant's "conditional resident status is extended for 18 months from the expiration date on [the claimant's] Form I-551, Permanent Residence Card (also known as a Green Card)."

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. Upon such review, the Board adopts the review examiner's consolidated findings of fact and deems 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 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

A claimant who certifies that he is not a citizen of the United States must show that he is legally authorized to work during the benefit year of his claim. The review examiner denied benefits to the claimant after the initial hearing, because the claimant had not submitted the necessary documents to establish that he is authorized to work in the United States. However, in his appeal to the Board of Review, the claimant submitted several documents relevant to his work authorization, so we remanded the case to the review examiner to have these documents entered into the record.

After reviewing the claimant's documents on remand, the review examiner found that the claimant has a Permanent Resident Card with an expiration date of December 21, 2020, and, on January 12, 2021, the claimant's conditional resident status was extended for 18 months from the December 21st expiration date on the Permanent Resident Card. The notice informing the claimant of the extension further states that the claimant's work authorization was also extended for the 18-month period.¹ Additionally, we take administrative notice of the information in the DUA's electronic record-keeping system, UI Online, for this issue, which shows that, on April 26, 2020, the agency verified that the claimant was authorized to work. This evidence shows that, during the claimant's benefit year, which runs from April 26, 2020, to April 24, 2021, the claimant has been legally authorized to work in the United States.

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 his claim and is, therefore, available for work under G.L. c. 151A, § 24(b).

¹ We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. 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).

The review examiner's decision is reversed. The claimant is entitled to receive benefits from the week beginning April 26, 2020, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - June 3, 2021



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 apply at: <https://ui-cares-act.mass.gov/PUA/>. The claimant may also call customer assistance at 877-626-6800 (select the number for your preferred language, then press # 2 for PUA).

**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