

The claimant did not provide the necessary documentation to establish that she was legally permitted to work and available for work in the United States, as required under G.L. c. 151A, § 24(b), while she waited for a new Employment Authorization Card.

**Board of Review
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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 affirm.

The claimant filed a claim for unemployment benefits with an effective date of March 15, 2020. On June 2, 2020, the DUA issued a Notice of Disqualification providing that the claimant was not entitled to benefits because she had not established that she 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 to deny benefits, but implemented an end date of August 23, 2020, to the issue. The review examiner's decision was rendered on February 17, 2021. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant did not establish that she was able 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 that she 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.

Findings of Fact

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

1. At all relevant times, the claimant is not a United States citizen. The claimant is a citizen of the People's Republic of China.

2. The claimant had an employment authorization card (I-766), issued by the United States Department of State, with an effective date of January 3, 2018. The I-766 expired on January 2, 2020.
3. The claimant filed for unemployment benefits with the Department of Unemployment Assistance (DUA) on April 17, 2020, with an effective date of March 15, 2020.
4. 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 her 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 May 18, 2020.
5. The claimant has a valid Massachusetts Driver's License, issued by the Commonwealth of Massachusetts, with an expiration date of March 18, 2021.
6. The claimant has a valid Social Security card, issued by the United States Social Security Administration, with the claimant's last four digits as 1607.
7. The claimant has a newer valid I-766 card, with an effective date of August 24, 2020. The I-766 expiration date is August 23, 2022.
8. It is unknown when the claimant applied for a renewal of her I-766 card.
9. As of the date of this decision, it is unknown whether the claimant was authorized to work in the United States from January 3, 2020 to August 23, 2020.

Credibility Assessment:

The claimant asserted at the remand hearing that she attempted to renew her I-766 in "January 2020" but did not provide any specific date or even when in the month she applied. The claimant stated that she applied for her renewal via U.S. mail but provided no evidence that she did apply by mail and gave no date as to when she mailed her application. Further, when asked if she could submit any documents (such as an I-766C) by USCIS after she submitted her application for renewal of her I-766, the claimant stated that she could not submit an I-766C or any other document from USCIS. As such, where the claimant provided no documentation to substantiate her claim, and where the claimant gave vague testimony, it is concluded that the claimant's testimony that she attempted to renew her I-766 in January, 2020 is not credible and does not have any indicia of reliability. Therefore, it is unknown when the claimant applied for a renewal of her I-766.

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, except as follows. We reject the portion of the credibility assessment that states the claimant was asked to submit a copy of an I-766C document from the USCIS, as the claimant was asked to submit a copy of Form I-797C during the remand hearing. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. We further believe that the rest of the review examiner's credibility assessment is reasonable in relation to the evidence presented.

The review examiner 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

As a state agency administering the unemployment insurance programs, we must also abide by U.S. Department of Labor (DOL) regulations governing eligibility for unemployment insurance. These regulations require that a non-citizen must be legally authorized to work by the appropriate U.S. agency in order to be considered "available for work." Specifically, 20 C.F.R. § 604.5 — Application — availability for work, provides, in relevant part, as follows:

(f) Alien status. To be considered available for work in the United States for a week, the alien must be legally authorized to work that week in the United States by the appropriate agency of the United States government. In determining whether an alien is legally authorized to work in the United States, the State must follow the requirements of section 1137(d) of the SSA (42 U.S.C. 1320b-7(d)), which relate to verification of and determination of an alien's status.

Thus, in order to find the claimant available for work under G.L. c. 151A, § 24(b), the claimant must show that, during her benefit year, she was legally authorized to work by the appropriate U.S. agency, currently the U.S. Department of Homeland Security (DHS) U.S. Citizenship and Immigration Services (USCIS).

After the initial hearing, the review examiner denied benefits to the claimant between January 3, 2020, and August 23, 2020, because the claimant had not submitted the necessary documents to establish that she was authorized to work in the United States during that period of time. The review examiner arrived at this conclusion after reviewing the claimant's Employment Authorization Document (EAD) with an expiration date of January 2, 2020, and the claimant's new EAD, which is valid between August 24, 2020, and August 23, 2022. We remanded the case to the review examiner to give the claimant an opportunity to submit documents establishing whether she received an extension to her work authorization between January 3, 2020, and August 23, 2020.

During the remand hearing, the claimant testified that, after she submitted her application to renew her expired EAD in January, 2020, she did not receive any documents regarding her application or work authorization, other than her new EAD, which she received in August, 2020, and is valid as of August 24, 2020. The claimant further testified that she was unsure of the exact date on which she filed her renewal application. Based on the claimant's testimony and lack of documentation, the review examiner found that it is unknown whether the claimant was authorized to work in the United States between January 3, 2020, and August 23, 2020. Since the claimant did not submit any documentation pertaining to the status of her work authorization between January 3, 2020, and August 23, 2020, she has not established that she was able to work in the United States during these months.

We, therefore, conclude as a matter of law that the claimant was not legally permitted to work in the United States between January 3, 2020, and August 23, 2020, and was, therefore, not available for work within the meaning of G.L. c. 151A, § 24(b).

The review examiner's decision is affirmed. The claimant is denied benefits between the weeks ending January 11, 2020, and August 22, 2020.

BOSTON, MASSACHUSETTS
DATE OF DECISION - July 28, 2021



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 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