

**Under the temporary, more flexible work search standards allowed by the federal government and adopted by DUA during the COVID-19 pandemic, the claimant's failure to search for work three times per week and maintain a work log is not grounds for disqualification under G.L. c. 151A, § 24(b).**

**Board of Review  
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**Issue ID: 0043 5836 14**

### 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 was discharged from her position with the employer on August 29, 2019. The claimant subsequently filed a claim for unemployment benefits with the DUA, which the agency denied on June 2, 2020, under G.L. c. 151A, § 24(b), because she stated she was unable to work. The claimant timely appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the claimant, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on December 2, 2020.

Benefits were denied after the review examiner determined that, although the claimant was capable of working and available to work since May 10, 2020, she did not prove she was actively seeking work and, thus, was disqualified under G.L. c. 151A, § 24(b). We accepted the claimant's application for review.

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 before the Board is whether the review examiner's decision, which concluded that the claimant should be denied benefits because she did not actively search for work three times per week and did not maintain a work search log, 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 filed for unemployment benefits with the Department of Unemployment Assistance on May 16, 2020, with an effective date of May 10, 2020.
2. Prior to the filing for unemployment benefits, the claimant worked part-time as an ambassador for an internet retail company for approximately one year.
3. Since May 10, 2020 until an unknown time, the claimant was pregnant.
4. Since May 10, 2020, the claimant has not placed restrictions on her ability to work a full-time schedule.
5. Since May 10, 2020, the claimant did not place any limitations on her availability to work a full-time schedule.
6. Since May 10, 2020, the claimant actively sought work twice a week. The claimant searched for work online (through Indeed and Google) and called acquaintances [sic] for leads.
7. Since May 10, 2020, the claimant did not maintain a work search log.
8. Since May 10, 2020, the claimant was not offered any work.

### Ruling of the Board

In accordance with our statutory obligation, we review 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 ultimate conclusion is free from error of law.

Upon such review, the Board adopts the review examiner's findings of fact and deems them to be supported by substantial and credible evidence. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant is not eligible for benefits effective the week beginning May 10, 2020.

Our decision in this case is governed by 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 . . . .

The review examiner concluded that, from the period beginning May 10, 2020, the claimant was capable of, and available for, work within the meaning of G.L. c. 151A, § 24(b). However, the review examiner also concluded that the claimant was not actively seeking work within the meaning of G.L. c. 151A, § 24(b). The DUA has a long-standing policy that claimants are obligated to actively search for work three times per week and maintain a work search log. *See DUA Adjudication Handbook*, Ch. 4, Sec. 4(B) (Mar. 1, 2020). Because the claimant only

searched for work twice per week and failed to maintain a work log, the review examiner disqualified her from receiving benefits. We disagree.

Ordinarily, under federal and Massachusetts law, claimants are only eligible for benefits if they are actively seeking full-time work. In this case, because the claimant seeks benefits from May 10, 2020, the effective date of her claim, through the present, we must also consider temporary modifications to the unemployment law brought about by the COVID-19 pandemic.

In March, 2020, Congress enacted the Emergency Unemployment Insurance Stabilization and Access Act (EUISAA) which, among other things, permitted states to modify their unemployment compensation law and policies with respect to work search and good cause on an emergency temporary basis as needed to respond to the spread of the COVID-19 pandemic.<sup>1</sup> The U.S. Department of Labor (DOL) has also advised states that they have significant flexibility in implementing the work search requirements.<sup>2</sup>

In accordance with the EUISSA and the DOL guidance, effective November 2, 2020, the DUA is waiving “work search requirements until such time as the COVID-19 emergency measures have been lifted.” DUA UI Policy and Performance Memo (UIPP) 2020.15 (Nov. 25, 2020), p. 2. Although the DUA announced this policy in November, it is authorized by the EUISSA and DOL guidance released in March. To disqualify a claimant under a more rigid reading of law prior to November 2, 2020, seems arbitrary and against public policy. As such, we believe the claimant’s work search requirement under G.L. c. 151A, § 24(b), is waived retroactively to the beginning of her claim, effective the week beginning May 10, 2020.

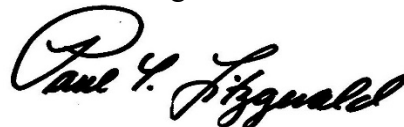
We, therefore, conclude as a matter of law that the claimant may not be disqualified under G.L. c. 151A, § 24(b), because pursuant to a federally authorized, temporary DUA policy change, the claimant has met the eligibility requirements adopted in response to the COVID-19 pandemic.

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<sup>1</sup> See EUISAA, Pub. Law 116-127 (Mar. 18, 2020), § 4102(b).

<sup>2</sup> See U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 10-20 (Mar. 12, 2020), 4(b).

The review examiner's decision is reversed. The claimant is entitled to receive benefits from the week beginning May 10, 2020, and for subsequent weeks if otherwise eligible.



Paul T.

**BOSTON, MASSACHUSETTS**

Fitzgerald, Esq.

**DATE OF DECISION - January 15, 2021**

Chairman



Michael J. Albano  
Member

Member Charlene A. Stawicki, Esq. 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](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.

JMO/rh