

**Although the employer wanted the claimant to work full-time, the claimant chose to limit his hours to part-time. Because he declined suitable work, he was not entitled to partial unemployment benefits. The claimant was also not entitled to total unemployment benefits during the two months that the employer shut down for renovations and had no work to offer to him, because he presented no evidence that he had become available for full-time work.**

**Board of Review  
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Chairman  
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Member  
Michael J. Albano  
Member**

**Issue ID: 0044 8842 38**

### 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 benefits for an unemployment claim effective May 24, 2020. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm.

On June 16, 2020, the agency initially determined that the claimant was entitled to partial unemployment benefits. The employer appealed and only the employer attended the hearing. In a decision rendered on February 24, 2021, the review examiner reversed the agency determination, concluding that the claimant was not in unemployment because he was not available for all hours of work offered by the employer and, thus, he was disqualified under G.L. c. 151A, §§ 29 and 1(r). The Board accepted the claimant's application for review and provided the parties with an opportunity to submit written reasons for agreeing or disagreeing with the review examiner's decision. Only the claimant responded.

The issue before the Board is whether the claimant was in unemployment within the meaning of G.L. c. 151A, §§ 29 and 1(r), either while he worked part-time for the employer, or during the few months when the employer shut down for renovations and had no work to offer.

### Findings of Fact

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

1. On 07/15/15, the claimant began to work 10–16 hours per week as a Delivery Driver for this employer's pizza restaurant.
2. The claimant is paid at a rate of \$10.00 per hour plus gratuities.

3. The employer wanted the claimant to work full-time hours as his business was busy and needed full-time Drivers, but the claimant only wanted to work a limited schedule of part-time hours.
4. The employer Owner frequently asked the claimant to work more hours, but the claimant refused to work more than his limited part-time hours.
5. The claimant was aware that there was a standing offer of full-time work and that the Owner wanted him to work full-time if the claimant was willing to work more hours.
6. On 06/02/20, the claimant filed a claim for unemployment benefits effective 05/24/20.
7. On 06/16/20, the parties were sent a Notice of Approval noting that the claimant was allegedly accepting all available work and was entitled to partial unemployment benefits.
8. The employer requested a hearing as the claimant was refusing full-time work to work limited part-time hours only.
9. The employer Owner noted that the claimant was laid-off on 01/04/21 as the restaurant is now undergoing renovations. The claimant is expected to be recalled to work at this same restaurant in March of 2021.

#### Credibility Assessment:

The testimony of the employer Owner witness was accepted as it was unrefuted and credible.

#### 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. We further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented. As discussed more fully below, we also conclude that the review examiner's decision to deny benefits is based on substantial evidence and is free from any error of law affecting substantive rights.

To be eligible for benefits, the claimant must be in unemployment. G.L. c. 151A, § 29, authorizes benefits be paid only to those in "total unemployment" or "partial unemployment." These terms are in turn 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.

Read together, the statutory provisions cited above under G.L. c. 151A, §§ 1(r) and 29, reflect the Legislature’s expectation that an unemployed worker will only be eligible for benefits if he is unable to obtain full-time work.

From the effective date of his claim, May 24, 2020, through the week ending January 2, 2021, the findings show that the claimant was not accepting all hours of work offered by the employer. *See* Findings of Fact ## 3–5. For this reason, we agree with the review examiner that the claimant was not in partial unemployment within the meaning of G.L. c. 151A, §§ 29(b) and 1(r)(1).

We also consider that the employer did not offer the claimant any work at all from January 4, 2021, through some point in March, 2021. *See* Finding of Fact # 9.<sup>1</sup> The claimant did not participate in the hearing, and there is nothing in the record to suggest that, during this period, he had become available for full-time hours of work. Thus, even though the employer was not offering any hours during this period, the claimant has failed to establish that he was otherwise able and available for full-time work. *See Connolly v. Dir. of Division of Unemployment Assistance*, 460 Mass. 24 (2011) (further citations omitted) (the purpose of the unemployment statute is to provide temporary relief to persons who are out of work and unable to secure work through no fault of their own). Absent such evidence, we cannot conclude that, when the restaurant shut down, the claimant was in total unemployment within the meaning of G.L. c. 151A, §§ 29(a) and 1(r)(2).

We, therefore, conclude as a matter of law that the claimant has not shown that he was in unemployment, as that term is defined under G.L. c. 151A, §§ 29 and 1(r).

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<sup>1</sup> We note that the claimant’s written comments to the Board state that he was laid off while the employer underwent renovations until March 11, 2021.

The review examiner's decision is affirmed. The claimant is denied benefits for the week beginning May 24, 2020, and for subsequent weeks, until he meets the requirements of the law.



Paul T. Fitzgerald, Esq.  
Chairman

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - May 21, 2021**



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 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](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.

AB/rh