

**After giving birth to her child, the claimant was not eligible for benefits until she had been medically cleared to return to work. Under the temporary, more flexible availability standards allowed by the federal government and adopted by DUA during the COVID-19 pandemic, the claimant's restricted availability as a result of a shortage of daycare due to COVID-19, is not grounds for disqualification under G.L. c. 151A, § 24(b).**

**Board of Review  
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**Issue ID: 0045 5580 94**

### 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 beginning August 13, 2020 pursuant to Section 2102 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, Pub. L. 116-136 which addressed whether the claimant met the statutory eligibility requirements. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm in part and reverse in part.

The claimant separated from her position with the employer on May 21, 2020 as a result of the COVID-19 pandemic. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on June 27, 2020. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by the claimant, the review examiner modified the agency's initial determination, awarding benefits through August 12, 2020, and denying benefits indefinitely thereafter in a decision rendered on November 14, 2020. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant failed to show that she was available for work as of August 13, 2020, and thus, was disqualified 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 before the Board is whether the review examiner's decision, which disqualified the claimant beginning August 13, 2020, because she was unable to obtain childcare, 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 worked full-time as an Administrative Service Manager for a Software company from 07/12/12 until she was laid-off due to [COVID]-19 company closings on 05/21/20.
2. On 05/24/24 the claimant filed a claim for unemployment benefits effective on 05/24/20.
3. The claimant was hopeful that she would be eventually recalled to work for this recent employer but so far, she has not been offered a return to work opportunity.
4. The claimant, at the time of filing, was capable and available to work and she was following the work search guidelines she was instructed to follow by DUA staff for a [COVID]-19 lay-off.
5. On 06/27/20 the claimant was sent a Notice of Disqualification because she allegedly had not shown that she had met the able, available and actively seeking work requirements of Section 24(b) of the law. The claimant requested a hearing.
6. The claimant had met all aspects of Section 24(b) of the law until she gave birth on 08/13/20 and as a single mother with no daycare the claimant was not available to work from 08/13/20 and for an indefinite period thereafter.

### 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. After such review, the Board adopts the review examiner's findings of fact except as follows. We reject the portion of Finding of Fact # 6 which states that the claimant had met all aspects of section 24(b) of the law until August 13, 2020, as this is a legal conclusion, not a finding of fact. In adopting the remaining findings, we deem 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 August 16, 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 . . . .

Ordinarily, under federal and Massachusetts law, claimants are only eligible for benefits if they are physically capable of, available for, and actively seeking full-time work, and they may not turn down suitable work. In this case, because the claimant seeks benefits from May 24, 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 able, available, and work search requirements, as well as flexibility in determining the type of work that is suitable given an individual's circumstances.<sup>2</sup> In response, the DUA promulgated COVID-19 Emergency Regulations relaxing its definition of suitable work and the standards for work search for individuals in certain circumstances.<sup>3</sup>

The review examiner concluded that during the period beginning May 24, 2020, until the date the claimant gave birth on August 13, 2020, the claimant met the requirements of G.L. c. 151A, § 24(b). We agree. Therefore, she may not be disqualified under this section of law from the week beginning May 24, 2020, through August 15, 2020.

We next consider whether the claimant was eligible for benefits under G.L. c. 151A, § 24(b) after her child was born. The claimant gave birth to her child on August 13, 2020. Finding of Fact # 6. Following the birth, the claimant was not medically cleared to return to work until September 24, 2020.<sup>4</sup> As she was not medically cleared to return to work for reasons unrelated to the COVID-19 pandemic during this period, she was not capable of, or available for, work within the meaning of G.L. c. 151A, § 24(b). Therefore, she is not eligible for benefits from the week beginning August 16, 2020 through September 26, 2020.

Because there is no indication from the record that the claimant was medically precluded from work as of September 25, 2020, we conclude that she was capable of work within the meaning of G.L. c. 151A, § 24(b), as of the week beginning September 27, 2020.

We next consider whether the claimant was available for work. The review examiner concluded that she was not. We disagree.

In response to the COVID-19 pandemic and as authorized by the EUISSA, the DOL has ruled, with regard to availability, that an individual may be considered available for work if they are available for any work for all or a portion of the week claimed, provided any limitation upon her availability does not constitute a withdrawal from the labor market.<sup>5</sup> Based upon this guidance, the DUA has announced temporary policy changes pertaining to the availability and work search requirements under G.L. c. 151A, § 24(b). The DUA has announced that a claimant who must remain at home because they are unable to secure childcare for a dependent due to COVID-19 may

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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).

<sup>3</sup> See 430 CMR 22.00, effective Mar. 16 – Jun. 14, 2020, and 430 CMR 22.00, effective Aug. 4 – Nov. 2, 2020.

<sup>4</sup> 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).

<sup>5</sup> UIPL 10-20, 4(b).

be considered available for work if the claimant could work from home via a teleworking or remote set-up. DUA UI Policy and Performance Memo (UIPP) 2020.12 (Oct. 8, 2020), p. 2–3.

In the present case, the claimant testified that she has been unable to secure childcare for her infant because the COVID-19 pandemic has caused delays in the placement process for childcare programs.<sup>6</sup> Because nothing in the record suggests the claimant is unable to work remotely, she meets the modified availability requirements as of the week beginning September 27, 2020.<sup>7</sup>

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 temporary DUA policy and regulations, the claimant has met the eligibility requirements adopted in response to the COVID-19 pandemic as of the week beginning September 27, 2020.

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<sup>6</sup> This testimony is also a part of the unchallenged evidence of record.

<sup>7</sup> We also note that, 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 further believe the claimant’s work search requirements were waived.

The review examiner's decision is affirmed in part and reversed in part. The claimant is ineligible for benefits from the week beginning August 16, 2020, through September 26, 2020. The claimant is entitled to receive benefits from the week beginning May 24, 2020, through August 15, 2020, as well as from the week beginning September 27, 2020, and for subsequent weeks if otherwise eligible.



**BOSTON, MASSACHUSETTS**

Paul T. Fitzgerald, Esq.  
Chairman

**DATE OF DECISION - December 24, 2020**



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.

LSW/rh