

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 for the week at issue is not grounds for disqualification under G.L. c. 151A, § 24(b).

**Board of Review
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Issue ID: 0047 1142 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 for the week ending June 27, 2020. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant separated from the employer on June 18, 2020. The claimant subsequently filed a claim for unemployment benefits with the DUA. On July 1, 2020, the agency denied the claimant's request for benefits covering the period from June 21, 2020, to June 27, 2020, because she did not meet minimum work search requirements under G.L. c. 151A, § 24(b). 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 October 17, 2020.

Benefits were denied after the review examiner determined that the claimant did not prove she was actively seeking work for the week ending June 27, 2020, and, thus, was disqualified for that week 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 for one week because she did not actively search for work during that week, 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. Prior to filing for unemployment benefits, the claimant worked for her most recent employer from December 1999 until June 18, 2020. On June 18, 2020,

the claimant was terminated from work due to job elimination by the employer. The claimant has been permanently separated from work.

2. The claimant filed an unemployment claim effective the week beginning June 21, 2020.
3. The claimant requested unemployment benefits for the week running from Sunday June 21, 2020 to June 27, 2020. During this week, the claimant was able and available to work fulltime [sic].
4. During the week ending June 27, 2020, the claimant did not look for work.
5. The claimant did look for work during the week ending June 27, 2020 as the claimant did not realize she was required to look for work immediately and was focusing on filing for unemployment benefits and arranging health insurance and dental insurance benefits.
6. On July 1, 2020, the Department of Unemployment Assistance issued a Notice of Disqualification denying the claimant benefits under Section 24(b) of the Law for the 1 week ending June 27, 2020. The claimant appealed the Notice of Disqualification.

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 for the week beginning June 21, 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 June 21, 2020, to June 27, 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). Because the claimant did not search for work from June 21, 2020, to June 27, 2020, 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 June 21, 2020, to June 27, 2020, 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.¹ The U.S. Department of Labor (DOL) has also advised states that they have significant flexibility in implementing the work search requirements.²

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 June 21, 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 adopted in response to the COVID-19 pandemic, the claimant is not required to actively search for work.

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

² 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 for the week beginning June 21, 2020, to June 27, 2020, and for subsequent weeks if otherwise eligible.



Paul T.

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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

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