

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

Issue ID: 0047 5439 54

ORDER TO RESCIND AND RE-ISSUE FINAL DECISION

On March 31, 2021, the Board of Review issued a final decision to affirm a decision by a review examiner of the Department of Unemployment Assistance (DUA) to deny the claimant benefits. Benefits were denied pursuant to G.L. c. 151A, § 24(b), on the ground that the claimant was not able and available for work from the week beginning April 5, 2020, through August 29, 2020.

After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we conclude that the review examiner's decision to disqualify the claimant pursuant to G.L. c. 151A, § 24(b), is based on substantial evidence and is free from any error of law affecting substantive rights.

However, pursuant to G.L. c. 151A, § 24(c), claimants who are ineligible for benefits because of a failure to comply with G.L. c. 151A, § 24(b), are entitled to up to three paid weeks of benefits due to illness, if they are otherwise eligible. Ordinarily, approved illness weeks may be used only for continued weeks claimed, not for the waiting period week due to the separate statutory requirement under G.L. c. 151A, § 23, to serve a waiting period. Since issuing the Board's original decision, the DUA has recognized that, while the waiting period has been temporarily waived due to the COVID-19 public health emergency,¹ claimants may be granted the illness weeks regardless of whether those weeks fall during continued weeks claimed. The Board agrees.

Consequently, the Board hereby RESCINDS its Final Decision, dated March 31, 2021, and concludes that, although the claimant is disqualified during the period April 5, 2020, through August 29, 2020 pursuant to G.L. c. 151A, § 24(b), the claimant is entitled to receive three weeks of benefits pursuant to G.L. c. 151A, § 24(c).

¹ Massachusetts enacted a change to G.L. c. 151A, waiving the waiting week, effective March 10, 2020. *See* Chapter 40 of the Acts of 2020. The statute expires 90 days after the termination of the governor's March 10, 2020 declaration of a state of emergency. *See* UI Policy and Performance Memo (UIPP) 2021.03 (Jan. 29, 2021), p. 5.

The review examiner's decision is affirmed in part and reversed in part. The claimant is entitled to receive benefits for the weeks beginning April 5, 12, and 19, 2020, as well as beginning August 30, 2020, and for subsequent weeks thereafter if otherwise eligible. The claimant is denied benefits for the weeks beginning April 26, 2020 through August 29, 2020.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 5, 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

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