

The claimant did not meet the availability requirement of G.L. c. 151A, § 24(b) during the period of time in which she was caring for her mother-in-law and not available to perform any work at all.

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

Issue ID: 0053 8413 61

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 as of September 21, 2020. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm in part and reverse in part.

The claimant filed claims for unemployment benefits with the effective dates of August 4, 2019, and August 16, 2020. In a determination issued on October 28, 2020, the DUA denied benefits to the claimant, because she was not available for work while providing full-time care to a family member. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by the claimant, the review examiner reversed the part of the agency's initial determination denying benefits to the claimant between January 26, 2020, and September 20, 2020, and affirmed the part of the decision denying benefits to the claimant as of September 21, 2020. The review examiner's decision was rendered on January 16, 2021. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not available for work as of September 21, 2020, and, thus, was disqualified under G.L. c. 151A, §§ 24(b). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we remanded the case to the review examiner to obtain additional evidence pertaining to the claimant's availability for work. The claimant participated in the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant was not eligible for benefits while unavailable for work, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. From January 26, 2020, through the date of the hearing on this issue, January 7, 2021, the claimant has been capable of working full-time if work was made available to her.

2. From January 26, 2020 through September 20, 2020, the claimant was available to work full-time, if full-time work was made available to her.
3. From January 26, 2020, through September 18, 2020, the claimant has engaged in at least three work search activities each week.
4. As of September 21, 2020, the claimant was not available to work because she had to provide 24/7 care to her mother-in-law who had dementia. The daycare facilities for such persons were all closed due to COVID-19. The claimant had to assist her mother-in-law with all life activities, including eating, toileting and bathing. She had to turn her in her bed every hour. As such, she was not available to do any type of work for an employer until after her mother-in-law died on January 14, 2021.
5. The claimant was available for [sic] accept full-time work as of January 15, 2021.
6. In October 2020, the claimant was informed that, if she wanted to maintain her employment with the present employer, she had to work at least one day before February 12, 2021. The employer sent all staff an e-mail each month with shifts that were open for the next month. The claimant was unable to accept any of the available shifts for October, November or December of 2020.
7. In December 2020, the employer sent out a text stating that there were open shifts available January 26, 2021 and January 29, 2021. The claimant agreed to work these shifts. Her sister arranged to take time off from work in order to care for the claimant's mother-in-law on these dates, so that the claimant could be available [for] work. As the claimant's mother-in-law passed on January 14, 2021, the claimant's sister did not have to provide this care.
8. The claimant filed her 2020-01 claim for unemployment benefits on August 17, 2020, effective August 16, 2020.
9. On October 28, 2020, DUA issued Notice of Disqualification 0053 8413 61-02, stating that the claimant was disqualified under Section 24(b) of the law starting January 26, 2020, and for an indefinite period of time thereafter, until she met the requirements of the law.

Ruling of the Board

In accordance with our statutory obligation, we review the record and the decision made by the review examiner to determine: (1) whether the consolidated findings are supported by substantial and credible evidence; and (2) whether the review examiner's original conclusion is free from error of law. Upon such review, the Board adopts the review examiner's consolidated 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 was *indefinitely* ineligible for benefits after September 20, 2020.

During their benefit year, claimants must meet the specific eligibility criteria set forth in 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

Neither the claimant's capability, nor her work search efforts are at issue in this decision, as there is no indication in the record that she has not met these requirements while claiming benefits. Only her availability for work is at issue, as it was affected by her domestic responsibilities. The review examiner awarded benefits to the claimant between January 25, 2020, and September 20, 2020, after finding that she was available for full-time work during this period of time. Because the claimant met the requirements of G.L. c. 151A, § 24(b), during the above months, we agree with the review examiner's decision to award benefits during that time.

We further agree with the review examiner's decision to deny benefits to the claimant between September 21, 2020, and January 14, 2021, because the claimant did not establish that she was available for full-time work during these months. Ordinarily, under federal and Massachusetts law, claimants may not limit their availability to less than full-time work, and even under the temporary limited circumstances in which reducing their availability has been permitted for COVID-19 related reasons, they may not limit their availability to less than part-time work.¹ Here, because the claimant was not available to perform any work between September 21, 2020, and January 14, 2021, she is not eligible for benefits during this period.

However, we disagree with the review examiner's original decision to deny benefits to the claimant after January 14, 2021, as the consolidated findings establish that the claimant became available for full-time work on January 15, 2021, thereby meeting the availability requirements as of that date.

We, therefore, conclude as a matter of law, that the claimant did not meet the availability requirement of G.L. c. 151A, § 24(b), only during the period of time in which she was not available to perform any work.

The review examiner's decision is affirmed in part and reversed in part. We affirm the part of the decision awarding benefits to the claimant between the weeks ending February 1, 2020, and

¹ See EUISAA, Pub. Law 116-127 (Mar. 18, 2020), § 4102(b), U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 10-20 (Mar. 12, 2020), 4(b), DUA UI Policy and Performance Memo (UIPP) 2020.14, p. 2–3, and DUA UI Policy and Performance Memo (UIPP) 2021.02, p. 2.

September 19, 2020. We further affirm the part of the decision denying benefits to the claimant between the weeks ending September 26, 2020, and January 16, 2021. However, we reverse the part of the decision denying benefits to the claimant as of the week beginning January 17, 2021, because the claimant met the availability requirement of G.L. c. 151A, § 24(b), at that time.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 28, 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.

svl/rh