

The claimant's failure to conduct an adequate work search is not disqualifying, as the DUA has temporarily waived the active work search requirement of G.L. c. 151A, § 24(b) during the pandemic emergency.

**Board of Review
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Issue ID: 0059 0939 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. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant filed a claim for unemployment benefits with an effective date of March 8, 2020. On November 30, 2020, the DUA issued a Notice of Disqualification under G.L. c. 151A, § 24(b), which denied benefits to the claimant beginning on October 25, 2020. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by the claimant, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on January 9, 2021. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant did not engage in an adequate work search 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 concluded that the claimant did not meet the requirements of G.L. c. 151A, § 24(b), because he did not engage in an adequate work search, is supported by substantial and credible evidence and is free from error of law, where the agency's current policies have temporarily waived the requirement that claimants actively search for work.

Findings of Fact

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

1. The claimant filed a claim for unemployment benefits effective 03/08/2020.
2. The claimant is a co-owner of a masonry construction business.
3. The claimant is an experienced mason.

4. The claimant became separated from employment on 10/25/2020, due to lack of work.
5. Beginning the week of 10/25/2020 through the week ending 12/12/2020, the claimant searched for full-time work in his field of experience with other employers by networking and visiting potential employers two (2) times per week.
6. The claimant searched for work for his company throughout the week by submitt[ing] bids online.
7. Beginning the week of 10/25/2020 through the week ending 12/12/2020, the claimant did not have any medical conditions that would prevent him from working full-time hours.
8. Beginning the week of 10/25/2020 through the week ending 12/13/2020, the claimant had no limitations to his schedule that would prevent him from working full-time hours.
9. The claimant would have accepted full-time work if full-time work were offered to him.
10. The claimant would have looked for less work for the business his [sic] owns if a full-time job was offered to him.
11. On 12/14/2020, the claimant returned to work at his company.

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 original 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 lack of an adequate work search disqualifies the claimant from receiving benefits.

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. These requirements are set forth in G.L. c. 151A, § 24(b), which provides, in pertinent part, as follows:

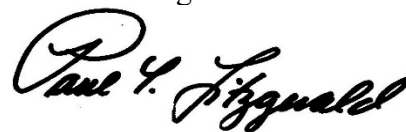
[An individual, in order to be eligible for benefits under this chapter, shall] . . . (b)
Be capable of, available, and actively seeking work in his usual occupation or any other occupation for which he is reasonably fitted

In this case, because the claimant seeks benefits as of October 25, 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 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.² In response, the DUA adopted several policies, including a policy waiving the work search requirements of G.L. c. 151A, § 24(b).³ Under this policy, the work search requirements have been waived for all claimants seeking benefits during the pandemic crisis, so long as such claimants remain ready to return to work once the pandemic measures have been lifted. This policy is effective retroactively to the beginning of the pandemic emergency on March 8, 2020.⁴

The review examiner denied benefits to the claimant after concluding that he did not perform an adequate work search, as he only searched for work twice per week. We disagree with the review examiner's denial of benefits under these circumstances. Because the work search requirement has been waived for all claimants as of March 8, 2020, the claimant's failure to conduct an adequate work search is not disqualifying. Furthermore, since the review examiner found that the claimant was capable of and available for full-time work, the claimant has established that he meets the requirements of G.L. c. 151A, § 24(b), as modified by the agency's current policies.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending October 31, 2020, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 30, 2021



Paul T. Fitzgerald, Esq.
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.

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).

³ DUA UI Policy and Performance Memo (UIPP) 2020.15 (Nov. 25, 2020).

⁴ DUA UI Policy and Performance Memo (UIPP) 2021.02 (Jan. 22, 2021), p. 2.

**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