

The claimant's daughter required 24-hour supervision due to mental health issues. As the daughter's school remained on remote learning due to the pandemic, the claimant had to stay at home to provide her daughter with the necessary supervision. Although she could not work at her usual job, the claimant was able to work remotely while providing this supervisory care. She met the DUA's temporary eligibility requirements under G.L. c. 151A, § 24(b), adopted in response to the COVID-19 pandemic.

**Board of Review
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Issue ID: 0065 7920 74

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 effective March 7, 2021, which was denied in a determination issued on April 3, 2021. 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 September 22, 2021. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not capable of, available for, and not actively seeking work while on a leave of absence, and, thus, she 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 circumstances surrounding the claimant's leave of absence. The claimant attended 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 available for work during the period on appeal because she had to remain home to provide care for her daughter, 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. The claimant worked as a full-time Store Manager beginning October 12, 2020.

2. On March 4, 2021, the claimant became aware that her daughter had suicidal ideation, when at a doctor's appointment with her daughter.
3. The claimant was placed on a leave of absence with her employer beginning March 7, 2021. The employer did not have remote work available.
4. The claimant was notified by the doctor that she should remain home from work to monitor her 14-year-old daughter, who suffered with severe anxiety, depression, and suicidal ideation. The claimant was providing 24-hour supervision, as her daughter could not be left alone.
5. The claimant and her daughter lived in a small home. The claimant was able to monitor her daughter while working from home if remote work was available.
6. The claimant felt that her daughter's mental state may have deteriorated because she was home alone during COVID-19 while the claimant was working.
7. The claimant's daughter was in therapy twice a week.
8. The Healthcare Provider's Statement of Capability indicated that the claimant was unable to work beginning March 7, 2021. It further indicated that it was anticipated that the claimant would be able to return to work on June 1, 2021. The Health Care Provider's Statement of Capability was signed with a date of March 16, 2021.
9. On April 3, 2021, a Notice of [Disqualification] was issued under Section 24(b) of the Law, indicating "You have stated that you are not available to work for an indefinite period of time. Therefore, you do not meet the availability requirements of the Law. You are not able to work due to caring for your medically ill child." "You are not entitled to receive benefits for the period beginning 3/7/2021 and for an indefinite period of time thereafter until you meet the availability requirements of the Law." The claimant filed an appeal to that determination.
10. The claimant's sister, who was no longer working, agreed to assist with monitoring the claimant's daughter to allow the claimant to return to work. The claimant returned to work for the employer in her full-time position as a Store Manager on Monday May 24, 2021. The claimant's sister began watching the claimant's daughter at that time.
11. A doctor's letter dated October 25, 2021, indicates "I am a licensed clinician at [Clinic A] in [Town A], Massachusetts and have been working with (claimant's daughters name) since April 5, 2021. [A] and her mother [B] sought out therapy services for [A] following an incident in March 2021 when [A] expressed suicidal ideation and had been engaging in self-injurious behavior. After the initial assessment with [A], I determined that she was likely experiencing

various symptoms of depression, warranting a diagnosis of Other Specified Depressive Disorder. [A] had been experiencing difficulties at school, particularly with remote learning which was required as a result of COVID restrictions. It is likely that many of [A]’s symptoms were exacerbated by the drastic changes and stress due related to COVID.”

12. A doctor’s letter dated October 26, 2021, indicates “[A] was seen in my office on 3/4/2021. She was diagnosed with severe depression and anxiety along with suicide ideation. She began her struggles as a result of the COVID-19 Pandemic and the isolation she felt. It is imperative that her mother (claimant name) be available to assist her in getting the appropriate professional help.

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 not available for work within the meaning of the law during the period on appeal.

At issue in this case is the claimant’s eligibility under 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

Under this section of the law, the claimant bears the burden of proving that she is able, available for, and actively seeking employment.

The review examiner disqualified the claimant on the grounds that she was not available for any work, because she had to remain at home to care for her child. The review examiner’s initial conclusion, however, did not consider the temporary policies adopted by the DUA to alleviate hardships caused by the COVID-19 pandemic.

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. They may meet these requirements, even though they are on a leave of absence from their regular employer. *See Dir. of Division of Employment Security v. Fitzgerald*, 382 Mass. 159, 163–164 (1980). In this case, because the claimant seeks benefits from March 7, 2021, through May 23, 2021, we must also consider the 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) 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

The DOL stated that individuals 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 their availability does not constitute a withdrawal from the labor market.³ In response, the DUA announced that, if an individual is in total unemployment while on any type of unpaid leave of absence, the claimant is not subject to disqualification under G.L. c. 151A, §§ 29, 1(r), or 24(b), as long as the reason for the claimant's inability to work is related to COVID-19 and the claimant remains available for some type of suitable work. This includes lack of child-care due to COVID-19. *See* DUA UI Policy and Performance Memo (UIPP) 2020.14 (Nov. 24, 2020), pp. 3 and 4.

Prior to filing for benefits, the claimant would go to work while her teenage daughter was attending classes remotely from home due to the COVID-19 pandemic. *See* Consolidated Findings ## 4–6 and 11. However, in March, 2021, the claimant learned that her daughter was experiencing severe mental health issues and her daughter's healthcare provider advised the claimant that her daughter would require 24-hour supervision. *See* Consolidated Findings ## 4, 11 and 12. As the claimant's daughter continued to attend school remotely, the claimant had no choice but to take a leave of absence so she could remain at home with her daughter. *See* Consolidated Findings ## 3, 4, 11 and 12. The claimant was, therefore, unable to continue working at the employer's place of business because of restrictions put in place in response to the COVID-19 public health emergency.

While the claimant would not be available to work at the employer's location, she was able to work remotely while providing the necessary supervision for her daughter. *See* Consolidated Findings ## 3 and 5. Thus, the record indicates the claimant was available for remote work while on her leave of absence. Pursuant to the flexible definition of suitable work adopted by DUA in response to the COVID-19 public health crisis, the claimant may not be disqualified, because she could not perform her usual work due to a lack of childcare and remained available for some type of suitable work. The claimant met the modified availability requirements as of the week beginning March 7, 2021.⁴

We, therefore, conclude as a matter of law that the claimant may not be disqualified under G.L. c. 151A, § 24(b), during the period between March 7, 2021, and May 22, 2021, because she has met the temporary eligibility requirements adopted by the DUA in response to the COVID-19 pandemic.

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 *See* UIPL 10-20, 4(b)

⁴ We also note that, in accordance with the EUISSA and the DOL guidance, effective November 2, 2020, the DUA waived "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. The work search requirement was reinstated as of the week beginning June 13, 2021. UIPP 2021.04 (May 20, 2021).

The review examiner's decision is reversed. The claimant is entitled to receive benefits from the week beginning March 7, 2021, through May 22, 2021, if otherwise eligible.



Charlene A. Stawicki, Esq.
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 23, 2021



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, Esq. did not participate in this decision.

**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