

**The claimant traveled to CA due to the illness and passing of a relative who was not an immediate family member. She is ineligible for benefits during the weeks in which she was in CA for the entire week, as she was not available for work while dealing with personal matters. The claimant is eligible during the week she traveled to CA and the week she came back to MA, as she was in MA and available for work during the majority of days during these two weeks.**

**Board of Review  
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**Issue ID: 0066 4492 59**

### 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 we affirm in part and reverse in part.

The claimant filed a claim for unemployment benefits with the DUA with an effective date of March 29, 2020. On April 1, 2021, the agency determined that the claimant was not entitled to benefits under G.L. c. 151A, § 24(b). 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 December 4, 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 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 capability and 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 available for work while traveling out-of-state, is supported by substantial and credible evidence and is free from error of law, where, after remand, the review examiner found that the claimant was available for work during a portion of some of the weeks at issue.

### Findings of Fact

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

1. The claimant opened a claim for benefits with an effective date of March 29, 2020.

2. The claimant was employed by the employer from 2014 until she separated from the employer on September 16, 2020.
3. The claimant was furloughed from the employer on or about April 20 or April 23, 2020.
4. The claimant was available for work between Sunday, May 31, 2020, and Wednesday, June 3, 2020.
5. The claimant traveled to California on Thursday, June 4, 2020.
6. On June 12, 2020, the employer recalled the claimant to return to work on June 22, 2020.
7. The claimant did not return to work because she was travelling to California to visit her sister and brother-in-law who was ill.
8. The claimant's brother-in-law passed away in California on June 11, 2020.
9. Prior to the June 12, 2020, recall, the claimant did not notify the employer that she was traveling out of state.
10. On June 25, 2020, the employer called the claimant while she was driving back from California. The employer scheduled a meeting with the claimant at 10:30 a.m. on June 30, 2020. Then the employer changed the meeting time to 2:00 p.m. Later, the employer rescheduled the meeting to July 3, 2020, at 2:30 p.m.
11. The employer instructed the claimant not to return to work until after her meeting with the employer on July 3, 2020.
12. The claimant returned to Massachusetts from her trip to California at 1:00 a.m. on June 29, 2020.
13. As of the morning of June 30, 2020, the claimant was available to work. The claimant was available to report to work at 6:00 a.m.
14. During the week ending July 4, 2020, the claimant did not work for the employer. She did not earn wages from the employer for the week ending July 4, 2020.
15. On July 3, 2020, the claimant met with the employer. The employer issued a final written warning to the claimant for failing to return to work when recalled. The employer instructed the claimant to return to work on July 6, 2020.

16. From January, 2019, after a fall at the work place, the claimant fractured her spine. The claimant was medically restricted to light duty work for an indefinite period.
17. From January, 2019, the claimant continued to work full-time, light duty for the employer.
18. Between May 4, 2020, and July 4, 2020, the claimant was still restricted to light duty work.
19. On July 6, 2020, the claimant returned to full-time work for the employer.

### 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 did not meet the availability requirements of the statute during the entirety of the period at issue.

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 . . . .

The claimant's capability and work search efforts are not at issue in this decision. Only her availability for work is at issue, as the claimant traveled to California to visit her sister and brother-in-law, who was ill at the time and subsequently passed away. *See Consolidated Findings ## 7–8.* The claimant's trip to California took place between Thursday, June 4, 2020, and Monday, June 29, 2020. *See Consolidated Findings ## 5 and 12.* In her original decision, the review examiner did not consider whether the claimant was available for work during any portion of the weeks in which she left for California and returned to Massachusetts, and, therefore, she denied benefits to the claimant during all of the weeks between the weeks ending June 6, 2020, and July 4, 2020.

We remanded the case to obtain additional evidence pertaining to the claimant's availability for work during the weeks ending June 6, 2020, and July 4, 2020. After remand, the review examiner found that the claimant was available for work between Sunday, May 31, 2020, and Wednesday, June 3, 2020, as she had not yet left for California. *See Consolidated Finding # 4.* The review examiner further found that the claimant was available for work as of the morning of Tuesday, June 30, 2020, as she had returned from California on June 29<sup>th</sup>. *See Consolidated Findings ## 12–13.* Finally, the review examiner found that the claimant was ready to meet with the employer and return to work on June 30<sup>th</sup>, but the employer did not allow the claimant to return until July 6, 2020. *See Consolidated Findings ## 10–11 and 19.*

As an initial matter, we note that we agree with the review examiner's decision to deny benefits to the claimant during the weeks ending June 13, 2020, June 20, 2020, and June 27, 2020, as the claimant was not available for work while on a trip to California strictly for the personal family matter of her brother-in-law's illness and passing. *See* DUA Adjudication Handbook, Chapter 4, § 3(B)(15). We also note that the claimant did not qualify for benefits during these three weeks under the illness weeks provision of G.L. c. 151A, § 24(c), as her trip to California was not related to the illness or passing of an *immediate* family member, as defined by the agency. *See* DUA Adjudication Handbook, Chapter 4, § 2(C)(3). Additionally, illness weeks only apply during weeks in which no suitable work is offered, and, because the employer originally recalled the claimant back to work with a start date of June 22, 2020, this is an additional factor disqualifying the claimant during the week ending June 27, 2020. *See* Consolidated Finding # 6.

During the weeks ending June 6, 2020, and July 4, 2020, which are the weeks in which the claimant traveled to California and back to Massachusetts, respectively, the claimant's eligibility depends on the number of days in each week that she was available for work, as a claimant who travels within the United States for personal reasons during a majority of the week for which benefits are claimed is not available under G.L. c. 151A, § 24(b). *See* DUA Adjudication Handbook, Chapter 4, § 3(B)(15). Here, the claimant was in Massachusetts and available for work on four days during the week ending June 6, 2020, and five days during the week ending July 4, 2020. Because she was available for work during the majority of each of these two weeks, she met the availability requirement.

We, therefore, conclude as a matter of law, that the claimant has met the availability requirement of G.L. c. 151A, § 24(b) during two of the five weeks at issue in this matter.

The review examiner's decision is affirmed in part and reversed in part. We affirm the part of the decision denying benefits to the claimant for the weeks ending June 13, 2020, June 20, 2020, and June 27, 2020. However, we reverse the part of the decision denying benefits to the claimant for the weeks ending June 6, 2020, and July 4, 2020. The claimant is entitled to receive benefits for these two weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - September 19, 2022**



Paul T. Fitzgerald, Esq.  
Member



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](http://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