

The claimant provided sufficient medical documentation to establish that she was capable of and available for work. Under the temporary, more flexible work search standards allowed by the federal government and adopted by DUA during the COVID-19 pandemic until June 15, 2021, the claimant's failure to search for work is not grounds for disqualification under G.L. c. 151A, § 24(b).

**Board of Review
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Issue ID: 0067 5936 56

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 an effective date of March 14, 2021. On April 13, 2021, the DUA issued a Notice of Disqualification under G.L. c. 151A, § 24(b), which denied benefits to the claimant beginning on April 11, 2021.¹ The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on June 26, 2021. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that, although the claimant has been capable of working since June 1, 2021, she failed to 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 she 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 COVID-19 policies had temporarily waived the work search requirement from March 8, 2020, until June 15, 2021.

Findings of Fact

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

¹ On April 21, 2021, the DUA issued a redetermination notice, informing the claimant that she had exhausted approved illness benefits and was disqualified beginning April 11, 2021, and indefinitely thereafter.

1. The claimant opened a claim for unemployment benefits with an effective date of March 14, 2021.
2. From April 11, 2021, the claimant was on medical leave from her employer.
3. The claimant was medically released to return to work on June 1, 2021.
4. From June 1, 2021, the claimant has been available to work full time.
5. The claimant is a dental assistant.
6. The claimant receives postings about dental assistant positions.
7. The claimant has not searched for work nor responded to postings because she is seeking to receive unemployment benefits.

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 findings are supported by substantial and credible evidence; and (2) whether the review examiner's original conclusion is free from error of law. After such review, the Board adopts the review examiner's findings of fact except as follows. Finding # 2 is unsupported by the record, because the claimant provided unchallenged testimony that she lost her job on January 21, 2021, and was not currently working.² In adopting the remaining findings, we deem 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 to receive benefits beginning April 11, 2021.

Our decision in this case is governed by 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 review examiner indefinitely disqualified the claimant from receiving benefits beginning April 11, 2021, and indefinitely, even though she found that, from the period beginning June 1, 2021, the claimant was capable of, and available for, work. *See Findings of Fact ## 3 and 4.* While we agree with the review examiner's decision to disqualify the claimant between April 11, 2021, and May 31, 2021, which is the period of time she was deemed incapable of and unavailable for work, we do not agree that the claimant should be disqualified from receiving benefits for the period beginning June 1, 2021.

² The claimant's separation from employment, while not explicitly incorporated into the review examiner's findings, is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. *See Bleich v. Maimonides School*, 447 Mass. 38, 40 (2006); *Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training*, 64 Mass. App. Ct. 370, 371 (2005).

The review examiner also concluded that the claimant was not eligible for benefits because she was not actively seeking work within the meaning of G.L. c. 151A, § 24(b). Given the effective date of the claimant's claim for unemployment benefits, we disagree.

Ordinarily, under federal and Massachusetts law, claimants are only eligible for benefits if they are actively seeking full-time work. In this case, because the claimant seeks benefits from April 11, 2021, through the present, 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.³ The U.S. Department of Labor (DOL) also advised states that they had significant flexibility in implementing the work search requirements.⁴

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 (UIPP) Memo 2020.15 (Nov. 25, 2020), p. 2. This temporary policy was in effect from March 8, 2020, until June 14, 2021.⁵ As such, the claimant's work search requirement under G.L. c. 151A, § 24(b), was waived from the beginning of her claim, effective the week beginning March 14, 2021, until the week ending June 12, 2021.

As of the week beginning June 13, 2021, the claimant has been obligated to make a reasonable, good faith effort to find new employment. Evancho v. Dir. of Division of Employment Security, 375 Mass. 280, 282 (1978). Moreover, she is also subject to disqualification if she turns down suitable work. *See* G.L. c. 151A, § 25(c).

We, therefore, conclude as a matter of law that the claimant was capable of, and available for, full-time work within the meaning of G.L. c. 151A, § 24(b), as of June 1, 2021. We further conclude that, because the work search requirement was waived for all claimants at that time, the claimant's failure to conduct an active work search is not disqualifying pursuant to G.L. c. 151A, § 24(b).

The review examiner's decision is affirmed in part and reversed in part. The claimant is denied benefits from April 11, 2021, until the week ending May 29, 2021. The claimant is entitled to receive benefits for the week beginning May 30, 2021, and for subsequent weeks, if otherwise eligible.

³ *See* EUISAA, Pub. Law 116-127 (Mar. 18, 2020), § 4102(b).

⁴ *See* U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 10-20 (Mar. 12, 2020), 4(b).

⁵ *See* UIPP 2021.02 (Jan. 22, 2021), p. 2 and UIPP 2021.04 (May 20, 2021).

N.B. – The DUA has been asked to investigate whether the claimant met the active work search requirements under G.L. c. 151A, § 24(b), starting the week beginning June 13, 2021.



Charlene A. Stawicki, Esq.
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 29, 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)**

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).

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.

JMO/rh