

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

Issue ID: 0071 4466 05

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 him benefits from the week beginning June 27, 2021, through August 28, 2021. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On January 27, 2022, the agency initially determined that the claimant was not entitled to unemployment benefits. The claimant appealed and attended the hearing. In a decision rendered on June 16, 2022, the review examiner affirmed the agency determination, concluding that the claimant was not available for full-time work, and was not actively seeking work, and, thus, was disqualified under G.L. c. 151A, § 24(b). The Board accepted claimant's application for review.

Ruling of the Board

As noted above, the review examiner disqualified that the claimant on grounds that he was not available for, or actively seeking, full-time work. Although we believe the hearing decision reaches the correct result, we do not agree that the claimant unreasonably restricted his availability for full-time work. The claimant's available hours comport with standard third shift hours and amount to 40 hours per week. The claimant is available to work five days a week, from Sundays through Thursdays. His availability is identical to the schedule that he had maintained while working for his most recent employer. Further, the record reasonably supports a conclusion that the claimant has good cause for restricting his availability, as he regularly provides care for his grandchild from Friday mornings to Sunday evenings. See Conlon v. Dir. of Div. of Employment Security, 382 Mass. 19, 20–24 (1980) (noting that domestic responsibilities, such as childcare, may constitute good cause to restrict availability).

However, even if the review examiner had correctly concluded that the claimant was available for full-time work, the outcome of the decision would remain the same. Because the claimant reported that he was not actively seeking work and produced no evidence at the hearing to show that he did engage in an active work search during the relevant timeframe, he does not meet the requirements of G.L. c. 15A, § 24(b).

After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we therefore conclude that the review examiner's decision is based on substantial evidence and is free from any error of law affecting substantive rights.

The review examiner's decision is affirmed. The claimant remains ineligible to receive benefits from the week beginning June 27, 2021 through August 28, 2021.

BOSTON, MASSACHUSETTS
DATE OF DECISION - July 22, 2022



Charlene A. Stawicki, 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

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/th