

**Board of Review
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Michael J. Albano
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Issue ID: 0072 8424 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 her benefits from the week beginning January 3, 2021, through February 5, 2022. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm in part and reverse in part.

On October 27, 2021, the agency initially determined that the claimant was not entitled to unemployment benefits from the week beginning January 3, 2021, through February 5, 2022. The claimant appealed and attended the hearing with her attorney. In a decision rendered on April 9, 2022, the review examiner affirmed the agency determination, concluding that the claimant was disqualified under G.L. c. 151A, § 24(b). The Board accepted the claimant's application for review.

Ruling of the Board

The review examiner disqualified the claimant on grounds that she was not capable of, available for, or actively seeking full-time work from the week beginning January 3, 2021, through February 5, 2022. After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we conclude that the review examiner's decision is based on substantial evidence and is free from any error of law affecting substantive rights. However, we note that, pursuant to G.L. c. 151A, § 24(c), claimants who are ineligible for unemployment benefits under G.L. c. 151A, § 24(b), may nonetheless be entitled to a maximum of three (3) approved illness weeks in their benefit year under certain circumstances.

As noted above, the review examiner found that the claimant was unable to work at all between January 3, 2021, and February 5, 2022. The findings do not indicate that the claimant was available for work, or that she was offered any work at any time. We also note that there is no indication in DUA records that the claimant had been disqualified for benefits pursuant to any other provision of the law. Based on the information presented, the claimant was otherwise eligible for benefits. Consequently, the claimant was eligible for the three (3) weeks of benefits while she was unable to work for medical reasons.

In addition, in accordance with federal guidance relating to the COVID-19 public health emergency, effective November 2, 2020, the DUA had waived "work search requirements until such time as the COVID-19 emergency measures have been lifted." DUA UI Policy and Performance (UIPP) Memorandum 2020.15 (Nov. 25, 2020), p. 2. This temporary policy was in effect from March 8, 2020, until June 14, 2021. *See* UIPP 2021.04 (Jun. 15, 2021). 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 November 22, 2020, until the week ending June 12, 2021. As of the week beginning June 13, 2021, the claimant has been obligated to actively search for new employment.

We believe that, even if the review examiner had correctly applied DUA's temporary COVID-19 policy modifications to the facts of this case, the outcome of the decision would remain the same. Because the claimant reported that she was not capable of working as a result of her medical conditions, she does not meet the requirements of § 24(b).

We, therefore, conclude as a matter of law that the claimant has not shown that she is able and available to work, as required under G.L. c. 151A, § 24(b). We further conclude that, pursuant to G.L. c. 151A, § 24(c), the claimant is entitled to three (3) weeks of benefits due to illness.

The review examiner's decision is affirmed in part and reversed in part. The claimant is entitled to three (3) illness weeks of benefits for the weeks beginning January 10, 2021,¹ January 17, 2021, and January 24, 2021. The claimant is denied benefits from the week beginning January 31, 2021, through February 5, 2022.

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 25, 2022



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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.

¹ Ordinarily, a claimant would not be eligible for an illness week benefit during the first week of a claim pursuant to G.L. c. 151A, § 23(a). However, this wait week was temporarily waived during the State of Emergency declared due to the COVID-19 public health emergency, from March 10, 2020, until September 11, 2021, allowing the claimant to be paid during the first week of her claim.

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