

The claimant was not capable of, available for, or actively seeking work in the week that immediately followed the death of her husband, and therefore, she did not meet the requirements of G.L. c. 151A, § 24(b). However, the claimant was eligible for one week of benefits pursuant to G.L. c. 151A, § 24(c), because the DUA treats a period of bereavement as a period of approved illness.

**Board of Review**  
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**Issue ID: 0073 0055 86**

### 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 with the DUA, effective March 21, 2021. On February 9, 2022, the agency issued a Notice of Disqualification under G.L. c. 151A, § 24(b), which disqualified the claimant for the week beginning September 5, 2021, through September 11, 2021. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, the review examiner affirmed the agency's determination in a decision rendered on March 16, 2022. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not available for, or actively seeking, work during the week in question, and, thus, was disqualified under G.L. c. 151A, § 24(b). Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's conclusion that the claimant is not eligible for benefits in the week beginning September 5, 2021, is supported by substantial and credible evidence and is free from error of law, where the record shows that the claimant was not capable of, available for, or actively seeking work during that week because of her husband's death, which occurred the week prior.

### Findings of Fact

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

1. The claimant filed an initial claim for unemployment insurance benefits, effective 3/21/21. Prior to filing her initial claim, the claimant worked part-time, averaging between twelve and twenty hours per week, performing office work for a construction business. The claimant worked for her last employer for a period of eleven years and was paid \$30 per hour at the time of separation.

2. The claimant worked part-time because she needed time to attend medical appointments with her husband[,] who was very ill. The claimant was unable to secure nursing help at home prior to June 2021[,] due to staffing shortages related to the [COVID-19] pandemic. The claimant’s husband passed away on 8/30/21.
3. When certifying her eligibility for unemployment insurance benefits for the week beginning 9/5/21, the claimant responded “No” to questions that asked whether she was capable of working, available for work, and actively seeking work. At that time, the claimant was grieving the loss of her husband. The claimant was also overwhelmed with trying to get her personal affairs in order. The claimant found that insurances and her vehicle registration, as well as other personal accounts, were cancelled after her husband passed because all of these accounts were set up in his name. The claimant continued to certify her eligibility for unemployment benefits because she thought that there may be an allowance for individuals dealing with such family matters.
4. On 2/9/22, the DUA issued the claimant a Notice of Disqualification, finding the claimant ineligible for benefits under Section 24(b) of the law for the week beginning 9/5/21 because she did not meet the statutory requirements.
5. On 2/14/22, the claimant appealed the Notice of Disqualification.

### 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. Upon such review, the Board adopts the review examiner’s findings of fact and deems them to be supported by substantial and credible evidence. As discussed more fully below, while we concur with the review examiner’s conclusion that the claimant did not meet the availability requirements during the week beginning September 5, 2021, we believe she is nonetheless eligible to receive one week of benefits.

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.<sup>1</sup>

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<sup>1</sup> However, 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.

In her decision, the review examiner applied G.L. c. 151A, § 24(b), in a straightforward manner. She reasoned that, since the claimant was not available for, or actively seeking, work during the week beginning September 5, 2021, the claimant was not eligible for benefits under the statute. *See* Finding of Fact # 3. The record does not contain any suggestion to the contrary. In addition, the record demonstrates that the claimant was also incapable of working during this timeframe, as she had certified for benefits and reported in a subsequent fact-finding questionnaire that she was not able to work that week. *See* Exhibits ## 2 and 4. As a result, the evidence presented does not demonstrate that the claimant met the requirements of G.L. c. 151A, § 24(b).

However, G.L. c. 151A, § 24(c) carves out an exception to the requirements of G.L. c. 151A, § 24 (b), in cases of illness and disability.<sup>2</sup> In a prior Board of Review decision, the Board concluded that the claimant was eligible for two weeks of benefits under this exception, where, during the two weeks at issue, the claimant was not emotionally able or available to return to work because her husband had recently passed away. *See* Board of Review Decision 0018 3586 32 (July 26, 2016), p. 3.<sup>3</sup> *See also* Board of Review Decision 0014 3611 80 (June 30, 2015) (concluding that the claimant was eligible for one week of benefits after the passing of her mother, despite failing to meet the requirements of § 24(b)) (June 30, 2015).<sup>4</sup>

Thus, we must also consider G.L. c. 151A, § 24(c), which states:

No individual shall be considered ineligible for benefits because of failure to comply with the provisions of said clause (b) if such failure is due to an illness or disability which occurs during a period of unemployment after he has filed a claim and registered for work, and has been determined to be otherwise eligible; provided that no work which would have been considered suitable but for such illness or disability was offered to him after he became ill or disabled; provided further, that the exception granted under this paragraph shall apply to three weeks only within a benefit year.

Pursuant to this paragraph, the claimant may still be eligible for benefits for up to three weeks if: (1) she was not able to work, available for work, or actively looking for work due to an illness; (2) she was not offered any suitable work; and (3) she is otherwise eligible for benefits.

The record establishes that the claimant was distraught by the passing of her husband on August 30, 2021, was grieving the loss, and was not emotionally able to return to work during the week at

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This temporary policy was in effect from March 8, 2020, until June 14, 2021. UIPP Memorandum 2021.04 (May 20, 2021), p. 2.

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 21, 2021, 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.

<sup>2</sup> This exception is also noted in Chapter 4, Section 2, page 9 of the DUA Adjudication Handbook, effective March 1, 2020: "A period of bereavement when there is a death in the immediate family is treated as a period of approved illness, provided that no suitable work was offered. The claimant's immediate family includes the claimant's spouse ...."

<sup>3</sup> Board of Review Decision 0018 3586 32 is an unpublished decision, available upon request. For privacy reasons, identifying information is redacted.

<sup>4</sup> Board of Review Decision 0014 3611 80 is also an unpublished decision, available upon request.

issue. See Findings of Fact ## 2 and 3. The claimant was also overwhelmed with trying to get her personal affairs in order. Finding of Fact # 3. Thus, the record shows that the claimant was not capable of, available for, or actively seeking work during the week beginning September 5, 2021.

Nothing in the record demonstrates that the claimant was offered any work in this timeframe. 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, and the DUA's electronic record-keeping system, UI Online, shows that the claimant was otherwise eligible for benefits. Thus, her situation during the week beginning September 5, 2021, falls within the limited exception to the requirements of G.L. c. 151A, § 24(b), and the claimant was eligible for one week of benefits.

We, therefore, conclude as a matter of law that, while the claimant has not shown that she was capable of, available for, or actively seeking work during the week beginning September 5, 2021, as required under G.L. c. 151A, § 24(b), the claimant is entitled to one week of benefits due to bereavement pursuant to G.L. c. 151A, § 24(c).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning September 5, 2021, if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - April 29, 2022**



Paul T. Fitzgerald, Esq.  
Chairman



Michael J. Albano  
Member

Member Charlene A. Stawicki, 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.

JMO/rh

