

Although the claimant was a union member in good standing, she did not establish that the union had restricted her from obtaining other, non-union work, or that she was subject to any union rules regarding how to proceed during periods of unemployment. Because she only sought work by contacting her employer, and made no other work search efforts, she is ineligible for benefits under G.L. c. 151A, § 24(b).

**Board of Review
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Issue ID: 0075 1967 76

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 affirm.

The claimant filed a claim for unemployment benefits with the DUA, effective January 23, 2022. On February 28, 2022, the agency denied her benefits for the week beginning January 23, 2022, through January 29, 2022. 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 May 6, 2022. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not actively seeking full-time 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 information about the claimant's union membership, and what impact, if any, it had on her work search efforts. The claimant attended 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 is ineligible for benefits for the period January 23, 2022, through January 29, 2022, is supported by substantial and credible evidence and is free from error of law, where there is no evidence in the record showing that the claimant's union had restricted her from obtaining other, non-union work, or that she was subject to any union rules regarding how to proceed during periods of unemployment, and where she had only sought work by contacting her employer.

Findings of Fact

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

1. Prior to filing for unemployment benefits, the claimant worked full-time as a cleaner for a cleaning and maintenance service company. She began working for her employer in 2004. The claimant would contact her employer daily for her assignments for that day.
2. Since 2004, the claimant has belonged to the Laborers' International Union of North America, Local [union unit] in [City] (the union). She has been a member in good standing with the union throughout her membership.
3. The claimant has not belonged to any other unions while working for this employer.
4. Beginning on 01/21/2022, the claimant's employer drastically reduced [the] claimant's hours due to a lack of work.
5. On 01/24/2022, the claimant filed an unemployment claim with an effective date of 01/23/2022.
6. When the claimant filed the above claim, she believed she was required to seek work only through the above union while unemployed. She did not provide a reason why she believed this was the case.
7. Neither the employer nor the union informed the claimant that she was required only to seek work through the union during periods of unemployment.
8. The claimant is not aware of any provisions in the employer handbook or the collective bargaining agreement between the employer and the union that discuss whether members are required to seek work only through the union or whether there are any other rules that must be followed during periods of unemployment.
9. During the week of 01/23/2022 to 01/29/2022, the claimant had no physical or mental conditions or restrictions impacting her ability to work.
10. During the week of 01/23/2022 to 01/29/2022, the claimant placed no limitations on her availability to work a full-time schedule.
11. During the week of 01/23/2022 to 01/29/2022, the claimant called her employer daily to inquire when she could return to work.
12. During the week of 01/23/2022 to 01/29/2022, other than contacting her employer, the claimant did not engage in any other work search activities.
13. In February of 2022, the claimant contacted her union by telephone. However, the claimant was advised that the union worklist is long. Consequently, the claimant continued to contact her employer for work.

14. On 02/28/2022, the DUA sent the claimant a Notice of Disqualification, stating she was disqualified from receiving unemployment benefits from the period beginning 01/23/2022 and through 01/29/2022 because she did not meet the requirements of Section 24(b) of the Law.

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. Further, as discussed more fully below, we agree with the review examiner's legal conclusion that the claimant is ineligible for benefits.

In her original decision, the review examiner concluded that the claimant was ineligible for benefits because she did not show that she was engaged in active work search efforts, as required 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 G.L. c. 151A, § 24(b), the burden of proof is on the claimant. *See* Evancho v. Dir. of Division of Employment Security, 375 Mass. 280, 282–283 (1978) (“the burden rests on the unemployed person to show that his continued unemployment is not due to his own lack of diligence”) (citation omitted).

Here, the claimant has not demonstrated that she has made a reasonable good-faith effort to search for new employment. *Id.* at 282. The DUA asks claimants to maintain a log of their job search, including a list of all contacts made, the dates of such contacts, the names, addresses, and phone numbers of any individuals contacted, and the results of each contact. *See* DUA Adjudication Handbook, Chapter 4, Section 4, Subsections A and B (March 1, 2020). In this case, the review examiner found that, during the week beginning January 23, 2022, the claimant's only work search efforts consisted of contacting her employer. Consolidated Findings ## 11–12. This single avenue of searching for work falls short of DUA's guidelines for a robust job search.

Throughout the initial and remand hearings, the claimant has asserted that she did not search for work because she is a union member who is obligated to seek work only through her union hall.¹ The findings establish that the claimant has belonged to a union since 2004 and has remained a member in good standing. Consolidated Finding # 2. While a member of a labor union may satisfy the requirements of G.L. c. 151A, § 24(b), by notifying the union of their unemployment, staying in good standing with the union, and adhering to any other requirements imposed by the union, this standard only applies to claimants whose unions limit them to obtaining work through a union

¹ We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. *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).

hiring hall, or otherwise prohibit them from performing non-union work. *See* DUA Adjudication Handbook, Chapter 4, Section 4, Subsection C, Paragraph (4) (March 1, 2020).

Here, however, there is nothing in the record to suggest that the claimant's labor union limited her work search efforts in this manner. *See* Consolidated Finding # 7. During the remand hearing, the claimant was unable to articulate the reason why she had believed she was required to only seek work through her union. Consolidated Finding # 6. In addition, the claimant could not describe any provisions in the employer's handbook or the collective bargaining agreement between the employer and the union that discuss whether members are required to seek work only through the union, or whether there are any other rules that must be followed during periods of unemployment. Consolidated Finding # 8. Although the review examiner had left the record open after the remand hearing date to afford the claimant an additional opportunity to provide supporting documentation, she only provided information that included photocopies of her Massachusetts identification card and union membership card. *See* Remand Exhibit 6. As a result, the claimant has not established that her union has restricted her from obtaining other, non-union work, or that she was subject to any union rules regarding how to proceed during periods of unemployment.

We, therefore, conclude as a matter of law that the claimant has not shown that she has actively searched for work, as required by G.L. c. 151A, § 24(b).

The review examiner's decision is affirmed. The claimant is denied benefits for the week beginning January 23, 2022, through January 29, 2022.

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 26, 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.

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