

The claimant had to quarantine for five days after feeling ill and being diagnosed with COVID-19. The record is insufficient to support the review examiner's conclusion that the claimant was in partial unemployment while in quarantine because there is no evidence that she was capable of work during this period. She is disqualified pursuant to G.L. c. 151A, §§ 29 and 1(r).

**Board of Review
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Issue ID: 0076 6609 01

Introduction and Procedural History of this Appeal

The employer appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to award unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant re-opened a claim for unemployment benefits with the DUA and was approved in a determination issued on May 6, 2021. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the employer, the review examiner affirmed the agency's initial determination and awarded benefits in a decision rendered on August 19, 2022. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant was in partial unemployment during the week of May 1, 2022, and, thus, was not disqualified under G.L. c. 151A, §§ 29 and 1(r). 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 employer's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant was in partial unemployment while quarantining due to a COVID-19 diagnosis because the employer did not have remote work available and the claimant was capable of work, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant was a full-time dental assistant for the employer, a dental practice from 2/7/22.
2. On 5/2/22, the claimant left early because she was not feeling well.
3. The claimant went to urgent care and was tested for COVID.

4. On 5/3/22 she received positive results.
5. The claimant was required to quarantine according to the {COVID-19} guidelines followed by the employer and was out of work from mid-day on 5/2/22 – 5/6/22.
6. There was no remote work available to the claimant.
7. The claimant was experiencing mild symptoms and would have been able to work remotely if available.
8. The claimant was paid for the half day she worked on 5/2/22, but not for the additional time off because she had recently used her accrued time.
9. The claimant returned to work on 5/9/22 and continues to work for the employer.

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. We reject Finding of Fact # 7 as unsupported by the evidence of record. 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 in partial unemployment during the week of May 1, 2022.

To be eligible for unemployment benefits, the claimant must show that she is in a state of unemployment within the meaning of the statute. G.L. c. 151A, § 29, authorizes benefits to be paid to those in total or partial unemployment. Those terms are defined by G.L. c. 151A, § 1(r), which provides, in relevant part, as follows:

- (1) “Partial unemployment”, an individual shall be deemed to be in partial unemployment if in any week of less than full-time weekly schedule of work he has earned or has received aggregate remuneration in an amount which is less than the weekly benefit rate to which he would be entitled if totally unemployed during said week; provided, however, that certain earnings as specified in paragraph (b) of section twenty-nine shall be disregarded. . . .
- (2) “Total unemployment”, an individual shall be deemed to be in total unemployment in any week in which he performs no wage-earning services whatever, and for which he receives no remuneration, and in which, though capable and available for work, he is unable to obtain any suitable work.

Claimants are only eligible for benefits if they are physically capable of, available for, and actively seeking full-time work, and they may not turn down suitable work. They may meet these requirements, even though they are on a leave of absence from their regular employer. *See, e.g., Dir. of Division of Employment Security v. Fitzgerald*, 382 Mass. 159, 163–164 (1980).

The claimant was required to quarantine for five days because she left work after feeling unwell and was subsequently diagnosed with COVID-19. Findings of Fact ## 2, 3, and 5. There is no indication from either the employer’s testimony or the documentary evidence submitted by either party that the claimant was capable of working during the period she was required to quarantine. Therefore, there is insufficient evidence in the record to determine whether the claimant was in partial unemployment during the week of May 1, 2022.

We, therefore, conclude as a matter of law that the claimant was not in unemployment within the meaning of G.L. c. 151A, §§ 29 and 1(r).

The review examiner’s decision is reversed. The claimant is denied benefits for the period between May 1, 2022, and May 7, 2022.

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 28, 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.

LSW/rh