

The claimant did not satisfy the active work search requirements of G.L. c. 151A, § 24(b). She only searched for work on alternating weeks because she was engaged in self-employment activities. Further, her work search logs contain little to no information about her actual work search activities and suggest she was only searching for work by reviewing emails sent to her by a single job-search website. Given this limited evidence, and the claimant’s testimony that she only applied to two jobs in a 10-month period, the claimant failed to meet her burden under § 24(b).

**Board of Review
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Issue ID: 0077 2299 56

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 30, 2022, which was denied in a determination issued on June 30, 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 September 8, 2022. We accepted the claimant’s application for review.

Benefits were denied after the review examiner determined that the claimant was not capable of, available for, and actively seeking suitable 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 evidence about the claimant’s availability for work and work search activities. 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 was not available for work within the meaning of G.L. c. 151A, § 24(b), because she was not willing to accept employment that interfered with her self-employment, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

The review examiner’s consolidated findings of fact and credibility assessment are set forth below in their entirety:

1. Prior to filing an unemployment claim, the claimant worked in community service as an outreach coordinator for the past 17 years.
2. The claimant filed a claim for unemployment benefits with an effective date of 1/30/2022.
3. The claimant has her own cleaning business and began working as a cleaner on 3/24/2022. She focuses on providing her services to seniors.
4. The claimant has not drafted a business plan for her house cleaning business.
5. Since filing for benefits, the claimant has had no medical restrictions that restrict her ability to work.
6. The claimant has 5 clients she provides cleaning services for on a regular basis.
7. Beginning 3/24/2022, the claimant picked up her first housecleaning client (A) working 3 hours in the morning for 1 day every other week. She charges \$65 per session.
8. On 5/13/22, the claimant picked up another housecleaning client (B) working 3-4 hours in the afternoon for 1 day every other week. She charges \$60 per session.
9. On 5/24/22, the claimant picked up another housecleaning client (C) working 5 hours in the afternoon for 1 day every other week. She charges \$75 per session.
10. On 6/23/22, the claimant picked up another housecleaning client (D) working 5 hours in the afternoon for 1 day every other week. She charges \$75 per session.
11. On 10/11/22, the claimant picked up another housecleaning client (E) working 3-4 hours in the afternoon for 1 day every other week. She charges \$75 per session.
12. The claimant's clients have at times suspended cleaning sessions, such as, after a stroke or breaking a hip. They have also requested changes in the schedule in response to medical or other appointments.
13. The claimant clusters the cleaning jobs so they all fall in the same week so she can have the other week free to concentrate on job search activities.
14. The claimant has spent additional time buying cleaning products, networking and researching ways to develop her business.
15. The claimant travels at least 30 minutes by car to and from client A, B, C and D's homes every other week. Client E is nearby.

16. The claimant has restrictions on the jobs she is looking for. The claimant is looking for a “reliable” job that is not temporary, matches her skills, pays at least \$23 per hour (which was her prior payrate), and does not require proof of a COVID-19 vaccination.
17. The claimant is unvaccinated.
18. Many jobs in the social services and medical fields require the COVID-19 vaccine.
19. The claimant does not have internet service and cannot work remotely without obtaining internet.
20. Beginning 1/30/2022, the claimant looked for work meeting her criteria. The claimant performed “Indeed Online Search[es]” almost weekly. In weeks the claimant performed these searches, they occurred from 1 to 6 days. The claimant also completed work search activities to benefit her business.
21. When searching for work, postings have required the COVID-19 vaccine, do not pay the rate the claimant is seeking, are part time positions, are temporary work, are located outside of the claimant’s area, and/or require a Master’s Degree.
22. The claimant applied to jobs that she believed matched her qualifications without concern if the hours or requirements of those jobs conflicted with housekeeping services provided for one or more of her clients.
23. The claimant would accept a full-time job meeting her criteria, even if the hours of the job conflicted with the hours of her cleaning services.
24. The claimant applied to one remote job. The claimant found and applied to 2 full time positions (one doing hospital community work and one doing community work at a school) that did not require the COVID-19 vaccine.
25. The claimant has struggled finding full-time employment, believes she is unemployable, and is discouraged by the results of her work search.
26. On 6/30/2022, the DUA sent the claimant a Notice of Disqualification stating she was disqualified from receiving unemployment benefits from the period beginning 01/24/2022 and for an indefinite period of time thereafter until she meets the requirements of Section 24(b) of the Law.

Credibility Assessment:

The claimant has provided fairly consistent testimony in both hearings. She testified in more detail during the remand hearing concerning her housecleaning business,

including hours spent working and the pay. In terms of her self-employment, her estimated average weekly income is only \$175. Her hesitation when asked if she was willing to give up her clients if offered a full-time job appears to be based on her overall discouragement in her work search. The claimant clearly testified in the remand hearing about her willingness to accept a full-time job meeting her criteria, even if the hours of the job conflicted with the hours of her cleaning services. Given this, it is it is believable that the claimant would be willing to accept new employment instead of or in addition to the housecleaning work, providing the new employment meets her criteria.

The claimant credibly testified in depth about her difficulties in finding new employment. The claimant's expressed discouragement in her work search efforts and belief that she is unemployable is due to her own self-imposed restrictions in the positions she is willing to accept. For example, the claimant's housecleaning work pays an average of \$17.50 per hour, yet she is requiring pay of at least \$23 per hour for new employment. The claimant's work search log of "Indeed Online Search[es]" is vague and non-specific and the claimant only offered testimony about submitting 2 applications for full time community work not needing the COVID-19 vaccination and 1 application for a remote position despite not having internet. The claimant is so limited in the work she is willing to accept (a permanent position, paying at least \$23 per hour, matching her skills, with no vaccine requirement in fields generally requiring the vaccine, without the current ability to work remotely), it is not believable that the claimant is likely to become reemployed in a position meeting this criteria.

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. We further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented. While we believe the review examiner's consolidated findings support the conclusion that the claimant did not meet the requirements of G.L. c. 151A, § 24(b), we disagree with the review examiner's conclusion that the claimant was not available for full-time work.

In order to be eligible for unemployment benefits, a claimant must be capable of, available for, and actively seeking work for each week in which benefits are claimed. This requirement is taken from 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 law, the burden of proof is on the claimant. *See Evancho v. Dir. of the Division of Employment Security, 375 Mass. 280, 282–283 (1978).* If the claimant fails to show

that she meets any one of the three requirements described in G.L. c. 151A, § 24(b), she is disqualified from receiving benefits until such time as she meets all of the requirements.

The review examiner initially disqualified the claimant on the grounds that she would not accept an offer of full-time employment because she was committed to continuing to develop her self-employment work as a cleaner. Following remand, however, the review examiner accepted as credible the claimant's testimony that she would have accepted new, full-time employment even if it interfered with her housekeeping work. Such assessments are within the scope of the fact finder's role, and, unless they are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. *See School Committee of Brockton v. Massachusetts Commission Against Discrimination*, 423 Mass. 7, 15 (1996). Upon review of the record, we have accepted the review examiner's credibility assessment as being supported by a reasonable view of the evidence.

However, the review examiner's consolidated findings and credibility assessment raised questions about the adequacy of the claimant's work search activities. Pursuant to G.L. 151A, § 24(b), an individual seeking unemployment benefits is also required to show that she has made a reasonable, good faith effort to find new employment. *Evancho*, 375 Mass. at 282. The Massachusetts Supreme Judicial Court has long held that whether an unemployed person is unable to obtain work is "largely a question of fact as to which the burden rests on the unemployed person to show that h[er] continued unemployment is not due to h[er] own lack of diligence." *Id.* at 282–283. Accordingly, the DUA requires that, during every week in which she certifies for benefits, the claimant makes an active and realistic work search by utilizing a variety of methods and contacting a variety of employers. *See e.g.*, Board of Review Decision 0018 3385 28 (Mar. 30, 2018).

The claimant explained that she would focus on searching for work and her self-employment on alternating weeks. Consolidated Finding # 13. As the claimant was limiting her work search activities based on this alternating schedule, she cannot have been performing the requisite work search activities during every week she certified for benefits. She would also use some of the time she had dedicated to searching for work to continue developing her own cleaning business. Consolidated Finding # 14. Generally, activities in furtherance of self-employment do not satisfy the work search requirements under G.L. c. 151A, § 24(b). The claimant's work-search log, which was admitted into evidence as Exhibit 8, corroborate these findings, as her notes suggest that she conducted three or more work-search activities unrelated to her self-employment only during thirteen of the twenty-seven weeks logged.¹

Additionally, as the review examiner noted in her credibility assessment, the claimant's work search log lacks specifics about what work search activities the claimant engaged in during any given week. In weeks where the claimant did not list any work search activities, her notes specify she did not search for jobs because did not receive email communications from a single job search website. Because the log lacks any details about the claimant's work search activities during the weeks in which she reported searching for jobs, we can reasonably infer that the claimant was not actively seeking out potential job opportunities from multiple sources, but rather limiting her search to reviewing emails she received from a singular online job site. The claimant's testimony that she had only identified and applied to three jobs during the 10-month period that she has been

¹ Exhibit 8 is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. *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).

certifying for benefits, when considered in the context of the testimonial and documentary evidence, further detracts from a conclusion that the claimant was making a reasonable, good faith effort to find new employment.

We, therefore, conclude as a matter of law that the claimant has not met her burden to show she was actively searching for work pursuant to G.L. 151A, § 24(b).

The review examiner's decision is affirmed. The claimant is denied benefits for the week of January 30, 2022, and for subsequent weeks, until such time as she meets the requirements of G.L. c. 151A.

BOSTON, MASSACHUSETTS
DATE OF DECISION - February 22, 2023



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