

**The claimant did not need to search for work or be available for work because her temporary layoff lasted only three weeks and she was notified of a definite return to work date at the time she was laid off. Held she is eligible for benefits pursuant to G.L. c. 151A, § 24(b).**

**Board of Review  
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**Issue ID:     0077 3412 84  
                  0077 3954 71  
                  0077 4730 07**

Introduction and Procedural History of this Appeal

The claimant appeals three decisions 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 June 19, 2022. She was denied benefits for the for the three weeks between June 19, 2022, and July 9, 2022, in one determination issued on July 1, 2022, and two determinations issued on July 12, 2022. The claimant appealed the determinations to the DUA hearings department. Following a hearing on the merits, attended by the claimant, the review examiner affirmed the agency’s initial determinations and denied benefits for these three weeks in three decisions rendered on August 10, 2022. We accepted the claimant’s application for review in each of these three decisions.<sup>1</sup>

Benefits were denied for the three weeks in question after the review examiner determined that the claimant was not capable of, available for, and actively seeking full-time work during the period on appeal and, thus, was disqualified under G.L. c. 151A, § 24(b). 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 claimant’s appeal.

The issue before the Board is whether the review examiner’s decisions, which concluded that the claimant was not entitled to benefits for the three weeks in question even though she had a definitive return-to-work date because she is retired and limited her availability to part-time work, are supported by substantial and credible evidence and are free from error of law.

Findings of Fact

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<sup>1</sup> Issue ID # 0077 3142 84 pertains to whether the claimant was capable of, available for, and actively seeking work during the week of June 19, 2022. Issue ID # 0077 3954 71 pertains to whether the claimant was capable of, available for, and actively seeking work during the week of June 26, 2022. Issue ID # 0077 4730 07 pertains to whether the claimant was capable of, available for, and actively seeking work during the week of July 3, 2022. As all three issues were heard at the same time and are governed by the same section of law, our decision shall address the claimant’s monetary eligibility during the entire period on appeal in all three determinations.

The review examiner's findings of fact in Issue ID # 0077 3412 84 are set forth below in their entirety:

1. The claimant filed a claim for unemployment benefits with an effective date of 06/19/2022.
2. Prior to filing a claim for benefits, the claimant worked approximately thirty (30) hours per week as a van driver.
3. The claimant was laid off on 06/17/2022 due to a seasonal lack of work and was set to return to work on 07/11/2022.
4. The claimant is retired.
5. During the week ending 06/25/2022, the claimant had no medical issues restricting her ability to work full time.
6. During the week ending 06/25/2022, the claimant was available to work without any restrictions on her schedule.
7. During the week ending 06/25/2022, the claimant was not looking for work because she planned to return to work as a van driver on 07/11/2022.

The review examiner's findings of fact in Issue ID # 0077 3954 71 are set forth below in their entirety:

1. The claimant filed a claim for unemployment benefits with an effective date of 06/19/2022.
2. Prior to filing a claim for benefits, the claimant worked approximately thirty (30) hours per week as a van driver.
3. The claimant was laid off on 06/17/2022 due to a seasonal lack of work and was set to return to work on 07/11/2022.
4. The claimant is retired.
5. During the week ending 07/02/2022, the claimant had no medical issues restricting her ability to work full time.
6. During the week ending 07/02/2022, the claimant was available to work without any restrictions on her schedule.
7. During the week ending 07/02/2022, the claimant was not looking for work because she planned to return to work as a van driver on 07/11/2022.

The review examiner's findings of fact in Issue ID # 0077 4730 07 are set forth below in their entirety:

1. The claimant filed a claim for unemployment benefits with an effective date of 06/19/2022.
2. Prior to filing a claim for benefits, the claimant worked approximately thirty (30) hours per week as a van driver.
3. The claimant was laid off on 06/17/2022 due to a seasonal lack of work and was set to return to work on 07/11/2022.
4. The claimant is retired.
5. During the week ending 07/09/2022, the claimant had no medical issues restricting her ability to work full time.
6. During the week ending 07/09/2022, the claimant was available to work without any restrictions on her schedule.
7. During the week ending 07/09/2022, the claimant was not looking for work because she planned to return to work as a van driver on 07/11/2022.

### 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 conclusions are free from error of law. Upon such review, the Board adopts the review examiner's findings of fact in each of the three decisions and deems them to be supported by substantial and credible evidence. However, as discussed more fully below, we reject the review examiner's legal conclusions that the claimant was not entitled to benefits during the three weeks that she certified for benefits.

At issue in these three cases 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 law, the claimant has the burden to show that she meets each requirement. She must be able to work, available for work, and actively seeking work in each week that she claims benefits.

However, there are certain limited exceptions to the G.L. c. 151A, § 24(b), requirements. Relevant here is that, in situations where a claimant is unemployed due to a temporary layoff or vacation shutdown, she is not required to be available for or actively seeking work with other employers so

long as she has a definitive return-to-work date within four weeks. *See e.g.*, Board of Review Decision 0012 9990 79 (Feb. 25, 2015). While the review examiner acknowledged this exception to G.L. c. 151A, § 24(b), in her analysis, she improperly applied it only to the obligation to search for work.

The claimant was temporarily laid off on June 17, 2022, and was given a definitive return-to-work date of July 11, 2022. Finding of Fact # 3. Because the claimant knew that she was set to return to work approximately three weeks after being laid off, the circumstances of her unemployment fall squarely within the above-articulated exception to the eligibility requirements under G.L. c. 151A, § 24(b). Accordingly, the review examiner erred in disqualifying the claimant on the grounds that she was not available for full-time work.

We, therefore, conclude as a matter of law that the review examiner's decisions to deny benefits are not free from error of law because the claimant was not obligated to be available for work where her temporary layoff lasted less than four weeks, and where she was given a definite return-to-work date at the time she was laid off.

The review examiner's decisions are reversed. The claimant is entitled to receive benefits for the for the three weeks between June 19, 2022, and July 9, 2022.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - October 18, 2022**



Charlene A. Stawicki, Esq.  
Member



Michael J. Albano  
Member

Chairman Paul T. Fitzgerald, 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.

LSW/rh