**To show that she was available to work pursuant to G.L. c. 151A, § 24(b), the claimant, a Canadian citizen, presented an expired Permanent Resident Card with a different surname than that used to file her claim. Whereas the work authorization granted under Permanent Resident Card does not expire, the claimant failed to provide substantial evidence that she had formally changed her surname from that appearing in the Permanent Resident card to that used to file her claim. Lacking this identifying information, she is ineligible for benefits because she did not demonstrate that she was authorized by the USCIS to work in the United States during her benefit year.**

**Board of Review**
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**Issue ID: 0078 2560 21**

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 July 17, 2022, which was denied in a determination issued on September 28, 2022. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on January 6, 2023. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant did not establish that she was legally permitted to work in the United States during her benefit year, and, thus, she was not entitled to benefits 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 updated documentation showing work authorization in the United States during the claimant's benefit year. The claimant attended the remand hearing, and, thereafter, the review examiner issued his 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 an expired Permanent Resident Card did not show that the claimant was authorized to work in the United States, 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 are set forth below in their entirety:

1. On 9/8/22, the claimant filed a claim for unemployment benefits effective 7/17/22.

2. On 9/28/22, the claimant was sent a Notice of Disqualification under Section 24(b) of the unemployment law beginning 7/17/22.

3. The disqualification noted that the claimant had not shown that she was legally permitted to work in the United States and therefore had not met the availability requirements of the unemployment law. The claimant requested a hearing.

4. The claimant is a citizen of Canada who has been working in the United States in the past as a Permanent Resident.

5. The claimant's Permanent Resident Card expired on 5/21/17.

6. The claimant submitted documentation to show that she has applied for renewal of her expired Permanent Resident Card, but no new valid card has been issued to her yet.

7. On 5/23/22, the claimant was sent an I-797 Notice of Action letter from the immigration department noting that this letter and her expired Permanent Resident Card provides evidence of lawful permanent resident status for 12 months from the expiration date on the front of her expired Permanent Resident Card. Since the card expired on 5/21/17, the extended expiration date ended on 5/21/18.

8. There was no further documentation from the immigration department to show that the claimant was authorized to work in the United States after 5/21/18.

9. The claimant submitted a copy of her Social Security card that was issued on 4/20/12. The name on the Social Security card is [Claimant Name]. The claimant stated that this is her correct current name.

10. The claimant submitted a copy of a valid Massachusetts driver's license in the name of [Claimant Name], date of birth 4/25/67, and an expiration date of 4/25/27. The address is [Address A].

11. The claimant submitted a copy of her Permanent Resident Card issued in the name of [Alias A]. This card shows an expiration date of 5/21/17.

12. The claimant stated that [Spouse A] was the name of her first husband that she married in 1985 and who she later divorced on 9/14/11.

13. The claimant stated that she married her current husband [Spouse B] in Puerto Rico on 12/30/11.

1. 14.The claimant provided a marriage certificate from Puerto Rico that used her birth certificate name of [Alias B] and not the name [Alias A]. The claimant stated that she understood that in Puerto Rico, the bride's birth name is always used on the marriage certificate.

14. The claimant stated that she applied for a new permanent Resident Card on 3/11/22 but has not been issued a new one yet.

15. The claimant said that she self-certified that she was eligible to work in the United States and she returned to work on 10/17/22 at [Employer], [Address B]. The claimant stated she continues to work for this same employer currently.

16. Due to her self-certified eligibility and hire by her current employer, the claimant stated she was authorized to work in the United States for her entire base period.

17. The Remand hearing record was held open until 2/28/24 for the claimant to send by email to the Boston Hearing Department documentation regarding her divorce from [Spouse A] and a paystub from her employment at [Employer]. The claimant said she would send these documents right away.

18. The requested additional documents were not provided.

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 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. As discussed more fully below, we agree with the review examiner's legal conclusion that the claimant has not shown that she was authorized to work in the United States during her benefit year.

The review examiner denied benefits after concluding the claimant had not established that she was legally available for work in the United States. In reaching this conclusion, the review examiner applied the state law provision 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 . . . .

As a state agency administering the unemployment insurance programs, we must also abide by U.S. Department of Labor (DOL) regulations governing eligibility for unemployment insurance. These regulations require that a non-citizen must be legally authorized to work by the appropriate U.S. agency in order to be considered "available for work." Specifically, 20 C.F.R. § 604.5 — Application — availability for work, provides, in relevant part, as follows:

> (f) Alien status. To be considered available for work in the United States for a week, the alien must be legally authorized to work that week in the United States by the appropriate agency of the United States government. In determining whether an alien is legally authorized to work in the United States, the State must follow the requirements of section 1137(d) of the SSA (42 U.S.C. 1320b-7(d)), which relate to verification of and determination of an alien's status.

Thus, in order to find the claimant available for work under G.L. c. 151A, § 24(b), the claimant must show that, during her benefit year, she was legally authorized to work by the appropriate U.S. agency, currently the U.S. Department of Homeland Security (DHS) U.S. Citizenship and Immigration Services (USCIS).

The claimant is a Canadian citizen. *See* Consolidated Finding # 4. As proof that she was authorized to work, the claimant submitted an expired Permanent Resident Card for a person with a different last name (Name A) than the last name the claimant used to file her unemployment claim (Name B). *See* Consolidated Finding # 11. Although the record shows that the claimant had submitted an application under Name B to the USCIS to replace her Permanent Resident Card, the USCIS had apparently not acted on that application as of the remand hearing. *See* Consolidated Finding # 15.

We are not troubled by the expiration date on the Permanent Resident Card, because the DHS immigration regulations state that an expiration date appearing on a Permanent Resident Card "reflects only that the card must be renewed, not that the bearer's work authorization has expired." 8 C.F.R.§ 274a.12(a)(1). However, the discrepancy in surnames is a problem.

The claimant has the burden to show that the USCIS has given the person who filed a claim using Name B authorization to work in the United States. With her appeal, the claimant presented a "my E-Verify" printout the DHS website which states that, based on the information which she provided, she is eligible to work in the United States. *See* Consolidated Findings ## 16 and 17; *see also* Remand Exhibit 1.[1] Aside from the fact that we do not know what information the claimant provided to DHS as part of her my E-Verify process, the USCIS website states, "Neither Self Check nor my E-Verify provide users with a work authorization credential."[2]

Alternatively, the claimant could prove that she legally changed her surname from Name A to Name B. The only evidence in the record is her testimony that she changed her name from Name A when she divorced and remarried, adopting Name B. It is evident from the phrasing of Consolidated Findings ## 12 and 13 that the review examiner refused to rely solely on this testimony. These findings provide merely that the claimant *stated* that she had divorced her first husband with the last name in Name A, then remarried an individual with the last name in Name B.

[1] Remand Exhibit 1 is the claimant's Board of Review appeal, which includes a copy of this my E-Verify document. While not explicitly incorporated into the review examiner's findings, the statements in this document are part of the unchallenged evidence introduced at the hearing and placed in the record, and they are 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).

[2] *See* https://www.e-verify.gov/employees/employee-self-services/mye-verify/self-check (Apr. 30, 2024).

A review examiner is not required to believe self-serving, unsupported evidence, even if it is uncontroverted by other evidence. McDonald v. Dir. of Division of Employment Security, 396 Mass. 468, 470 (1986). 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). "The test is whether the finding is supported by "substantial evidence.'" Lycurgus v. Dir. of Division of Employment Security, 391 Mass. 623, 627 (1984) (citations omitted). "Substantial evidence is 'such evidence as a reasonable mind might accept as adequate to support a conclusion,' taking 'into account whatever in the record detracts from its weight.'" Id. at 627–628, *quoting* New Boston Garden Corp. v. Board of Assessors of Boston, 383 Mass. 456, 466 (1981) (further citations omitted). We believe that his assessment is reasonable in relation to the evidence presented.

During the hearing, the claimant further testified that, with her Permanent Resident Card renewal application, she had to submit the original marriage certificate showing Name A and the new marriage certificate for Name B. At the remand hearing, she merely presented the marriage certificate for Name B, but it shows the claimant's birth name, not Name A. *See* Consolidated Finding # 14. The review examiner left the record open to provide the claimant with time to submit a document showing her divorce from the individual with Name A, but she failed to do so. *See* Consolidated Findings ## 18 and 19. Without any documentary proof of this name change to corroborate the claimant's testimony, the review examiner reasonably declined to assign her testimony much weight.

In short, the claimant, who filed this claim under Name B, has failed to demonstrate that the USCIS has authorized her to work in the United States. We, therefore, conclude as a matter of law that the claimant has not met her burden to show that she was available for work during her benefit year, as required under G.L. c. 151A, § 24(b).

The review examiner's decision is affirmed. The claimant is denied benefits for the week beginning July 17, 2022, and for subsequent weeks.

**BOSTON, MASSACHUSETTS**
**DATE OF DECISION - May 10, 2024**

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.

AB/rh