

**The claimant declined suitable work in certain weeks just to look for different employment. She did not meet the definition of partial unemployment pursuant to G.L. c. 151A, §§ 29 and 1(r) during those weeks. Moreover, when the instant employer did not have suitable work available, the claimant testified that she was working full-time for other employers. Since she was working full-time, she did not meet the statutory definition of being in total or partial unemployment. She is ineligible for benefits.**

**Board of Review  
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**Issue ID: 0078 5680 64**

### 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 October 30, 2022, which was approved in a determination issued on January 10, 2023. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the employer, the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on May 2, 2023. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not in total or partial unemployment and, thus, was disqualified under G.L. c. 151A, §§ 29 and 1(r). 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 testimony from the claimant, as she was unable to connect to the initial hearing due to technical issues beyond her control. Only the claimant attended the remand hearing. 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 the claimant was not in unemployment within the meaning of G.L. c. 151A, because she regularly declined the instant employer's offers of suitable work, 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 or about 3/30/2021, the claimant began working for the instant employer, a hospital, as a part-time MRI technologist. Upon hire, the claimant's work

schedule for the instant employer was eight-hour shifts on Saturdays and Sundays on every other weekend.

2. The claimant filed a claim for unemployment insurance benefits with an effective date of 10/30/2022.
3. The Department of Unemployment Assistance (DUA) determined that the claimant was monetarily eligible to receive weekly unemployment benefits in the amount of \$1,015.00 with an earnings disregard of \$338.33.
4. The claimant's base period was determined to be from 10/01/2021 to 9/30/2022.
5. During the claimant's base period she received \$70,561.72 from her full-time employer (ER-2). The claimant also worked as a radiologic technologist for ER-2. She received \$41,867.06 from the instant employer. The claimant performed services for the employer at the same time she performed services from her full-time employer.
6. The instant employer's MRI supervisor ([A]) supervised the claimant. The claimant was also supervised by the employer's director of radiology ([B]).
7. In June 2022, the claimant requested a change in her work status with the instant employer from part-time to per diem. The claimant requested the change to per diem status with the instant employer because she began to take on traveling work and would no longer be available as much for work from the instant employer. [B] granted the claimant's request.
8. As a per diem employee for the instant employer, the claimant received her work schedule from [A] on a monthly basis. [A] provided an email to all per diem staff with a calendar of available per diem shifts for each month before that month began. The claimant would then respond to [A] with the dates that she was available to work for the instant employer. [A] would then provide the claimant with her per diem shifts for that particular month.
9. The claimant submitted requests for unemployment insurance benefits for weeks with the following week end dates: 11/5/2022; 11/12/2022; 11/19/2022; 11/26/2022; 12/3/2022; 12/10/2022; 12/17/2022; 12/24/2022; 12/31/2022; and 1/7/2023.
10. During the week ending 11/5/2022, the claimant was not offered any work shifts by the instant employer and she did not earn any wages.
11. During the week ending 11/12/2022, the claimant was offered available work shifts from the instant employer for 11/10/2022 and 11/11/2022. The claimant did not accept either of the shifts from the instant employer because she was not available to perform work for the instant employer during the week ending 11/12/2022.

12. During the week ending 11/19/2022, the claimant was offered an available work shift from the instant employer for 11/15/2022. The claimant initially accepted the work shift on 11/19/2022 but ultimately did drop the shift from the instant employer because she had a medical procedure performed that week. The claimant was not capable or available to perform any work during the week ending 11/19/2022.
13. During the week ending 11/26/2022, the claimant was not offered any work shifts by the instant employer and she did not earn any wages.
14. During the week ending 12/3/2022, the claimant was offered an available work shift from the instant employer for 12/4/2022. At the time the claimant was offered work from the instant employer for the week ending 12/3/2022, she determined that she was not available to accept and perform the work offered because she was in the process of searching for a full-time position with other employers. The claimant anticipated that she would have obtained a full-time position with another employer by the week ending 12/3/2022. The claimant did not earn any wages.
15. During the week ending 12/10/2022, the claimant was offered available work shifts from the instant employer for 12/6/2022, 12/7/2023 and 12/8/2023. The claimant did not accept any of the shifts offered by the instant employer and she did not earn any wages during the week ending 12/10/2023.
16. During the week ending 12/17/2022, the claimant was not offered any work shifts by the instant employer and she did not earn any wages.
17. During the week ending 12/24/2022, the claimant was not offered any work shifts by the instant employer and she did not earn any wages.
18. During the week ending 12/31/2022, the claimant was not offered any work shifts by the instant employer and she did not earn any wages.
19. During the week ending 1/7/2023, the claimant was not offered any work shifts by the instant employer and she did not earn any wages.
20. During the weeks ending 11/5/2023, 11/26/2022, 12/17/2022, 12/24/2022, 12/31/2022, and 1/7/2023, the claimant was capable of performing work but she restricted her availability to work for the instant employer during each of these weeks because she determined that she was in the process of searching for a full-time position with other employers and did not want to accept work from the instant employer that she would later have to drop if she became employed by another employer.
21. From the week ending 11/5/2023 through the week ending 1/7/2023, the claimant did not accept and work any shifts for the instant employer.

22. Following the week ending 1/7/2023, the claimant returned to a full-time work schedule and ceased requesting unemployment insurance benefits.

### 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. After such review, the Board adopts the review examiner's consolidated findings of fact except as follows. We reject Consolidated Finding # 22 as inconsistent with the uncontested evidence of record. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. Additionally, as discussed more fully below, we believe that the review examiner's consolidated findings of fact support the conclusion that the claimant is not entitled to benefits.

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:

“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....

G.L. c. 151A, § 29(a), authorizes benefits to be paid to those in total unemployment. Total unemployment is defined at G.L. c. 151A, § 1(r)(2), which provides, in relevant part, as follows:

“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.

In his initial decision, the review examiner concluded the claimant was indefinitely ineligible for benefits because she had consistently declined offers of suitable work from the instant employer. By her own admission, the claimant declined offers of suitable work from the instant employer during several weeks, primarily because she was pursuing other full-time contract opportunities. Consolidated Findings ## 11, 12, 14, 15, and 20. Looking for work is not a basis for declining suitable work. Thus, the record confirms the claimant was not in unemployment within the meaning of G.L. c. 151A, §§ 29(a) and 1(r) during the weeks of November 6, 2022, November 13, 2022, November 27, 2022, and December 2, 2022.

While the consolidated findings of fact now indicate that the employer did not have suitable work available to the claimant during the other six weeks the claimant certified for benefits, the

availability of suitable work is not the sole determinative factor in assessing the claimant's unemployment status. *See Consolidated Findings ## 9, 10, 13, and 16–19.* A claimant must also be physically capable of, available for, and actively seeking full-time work in order to be eligible for benefits under G.L. c. 151A, §§ 29 and 1(r).

While not in the consolidated findings, the claimant's uncontested testimony at the remand hearing was that she worked at least two other positions during the period she certified for benefits. Specifically, the claimant testified that she worked a full-time, 40 hour a week travel position with a second employer during the period between June 2022 and June 2023, and a part-time position with a third employer beginning in June 2022.<sup>1</sup> The claimant's statements are consistent with both the timing of her request to switch to a *per diem* schedule with the instant employer and her explanation that she requested the change because she was working other travel contracts. *See Consolidated Finding # 7.* Additionally, a review of wage information reported to the DUA in its electronic record-keeping system, UI Online, shows that the claimant was performing wage-earning services for multiple employers throughout the 4<sup>th</sup> quarter of 2022 and 1<sup>st</sup> quarter of 2023. This wage information appears consistent with the claimant's sworn testimony that she was working more than a full-time schedule during the weeks she certified for benefits. A claimant who works full-time is not in total or partial unemployment pursuant to G.L. c. 151A, §§ 29 and 1(r). Thus, the claimant was not in unemployment beginning October 30, 2022.

We, therefore, conclude as a matter of law that the claimant has not met her burden to show that she was entitled to benefits under G.L. c. 151A, §§ 29 and 1(r), beginning October 30, 2022.

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

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - September 15, 2023**



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**

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<sup>1</sup> The claimant's uncontested testimony in this regard 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).

**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