

The claimant established through documentation that he was legally permitted to work in the United States for a portion of his benefit year and was, therefore, available for work during that period pursuant to G.L. c. 151A, § 24(b).

**Board of Review
100 Cambridge Street, Suite 400
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member
Michael J. Albano
Member**

Issue ID: 0079 1670 86

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 reverse.

The claimant filed a claim for unemployment benefits with an effective date of January 29, 2023. On April 13, 2023, the agency issued a determination denying benefits to the claimant. 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 July 7, 2023. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant did not establish that he was legally available to work in the United States and, thus, was not entitled to benefits 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 on appeal is whether the review examiner's decision, which concluded that the claimant did not establish he was legally available for work under G.L. c. 151A, § 24(b), is supported by substantial and credible evidence and is free from error of law, where the documentary evidence in the record shows that the claimant is authorized to work in the United States.

Findings of Fact

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

1. The claimant filed a new claim for unemployment insurance benefits effective 1/29/2023.
2. On 11/9/2021, USCIS issued the claimant a "Form I-797C Notice of Action" as an Approval Notification stating that the claimant's application was finally processed and approved effective 11/9/2021 through 11/8/2023.

3. The Approval Notification states, “We have approved your application for employment authorization. We will send your Employment Authorization Document (EAD) to you separately. Your EAD card is proof that you are allowed to work in the United States. Show your card to your employer to verify your authorization to work during the dates on the card. You cannot use this approval notice as proof of your employment authorization.”
4. The claimant has failed to provide documentation to the Department of Unemployment Assistance (DUA) to establish he is legally authorized to work in the USA.

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 conclusion is free from error of law. Upon such review, the Board adopts the review examiner’s findings of fact and deems 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 is not legally available to work in the United States during the relevant period.

The review examiner denied the claimant benefits pursuant to 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

A claimant who certifies that he is not a citizen of the United States must show that he is legally authorized to work during the benefit year of his claim. The review examiner denied benefits to the claimant after finding that, although the claimant presented a Form I-797 Notice of Action approving his application for employment authorization between November 9, 2021, and November 8, 2023, he failed to present a copy of his Employment Authorization Document (EAD). *See* Findings of Fact ## 2 and 4. The claimant testified that he never received the EAD.¹ The review examiner further found that the above approval notice states that it cannot be used as proof of employment authorization, and an EAD should be presented to an employer to verify authorization to work. *See* Finding of Fact # 3.

While we acknowledge that the approval notice does state that an EAD should be presented to employers for verification purposes, the approval notice nonetheless clearly states that the claimant is authorized to work in the United States between November 9, 2021, and November 8, 2023. Further, we note that the information contained in the DUA’s electronic record-keeping system,

¹ We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. *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).

UI Online, shows that, on January 30, 2023, the agency verified that the claimant has an EAD that expires on November 8, 2023. This evidence shows that, from the start of the claimant's benefit year, January 29, 2023, until November 8, 2023, the claimant was legally authorized to work in the United States.

We, therefore, conclude as a matter of law that the claimant was legally permitted to work in the United States and, therefore, was available for work under G.L. c. 151A, § 24(b), for a portion of her benefit year.

The review examiner's decision is reversed. The claimant is entitled to receive benefits from January 29, 2023, through November 11, 2023, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 12, 2023



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

Member Charlene A. Stawicki, 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

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.

SVL/rh