

The claimant was out of the country on vacation from Wednesday March 8, 2023, through Tuesday, March 21, 2023. He did not meet the availability requirements of G.L. c. 151A, § 24(b), for the majority of the week of March 5, 2023, and the entirety of the week of March 12, 2023, because he was out of the country. Although ineligible for benefits during those two weeks, he is eligible during the week of March 19, 2023, because he was in MA and available for work during the majority of the days during that week.

Board of Review
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Issue ID: 0079 4611 99

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 for the period between March 5, 2023, and March 25, 2023. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm in part and reverse in part.

The claimant filed a claim for unemployment benefits with the DUA, which was denied for the period between March 5, 2023, and March 25, 2023, in a determination issued on May 26, 2023. 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 in a decision rendered on July 19, 2023. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not available for work between March 5, 2023, and March 25, 2023, and, thus, was disqualified during those weeks 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 decision, which concluded that the claimant was not available for work within the meaning of G.L. c. 151A, § 24(b), during the weeks of March 5, 2023, through March 25, 2023, because he was out of the country on vacation, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. Prior to filing for unemployment benefits, the claimant worked as a director of commercial real estate. The claimant also has prior experience working in other areas of the commercial real estate space as well as in investment banking.

2. On or about 1/12/2023, the claimant was separated from employment due his position being eliminated.
3. On 1/27/2023, the claimant filed an unemployment claim with the Department of Unemployment Assistance (“DUA”) with an effective date of 1/22/2023 and a benefit year end of 1/20/2024.
4. The claimant certified weekly for the weeks beginning 1/22/2023 and through 3/11/2023 and again for the week beginning 3/19/2023 through 3/25/2023.
5. On 3/2/2023, the claimant received and accepted a job offer for a new, permanent fulltime position, expected to begin on 3/27/2023.
6. In the beginning of March 2023, after accepting the job offer, the claimant scheduled a trip out of the country.
7. The claimant was travelling out of the country beginning on 3/8/2023 and through 3/21/2023.
8. During the weeks beginning 3/5/2023 through 3/25/2023, the claimant had no physical or mental conditions or restrictions impacting his ability to work.
9. During the weeks beginning 3/5/2023 through 3/25/2023, the claimant was not available to work because he was traveling abroad on vacation.
10. During the weeks beginning 3/5/2023 through 3/25/2023, the claimant was not actively seeking work because he had secured a bona fide job offer, beginning on 3/27/2023.
11. On 5/26/2023, the DUA sent the claimant a Notice of Disqualification stating he was disqualified from receiving unemployment benefits from the period beginning 3/5/2023 and through 3/25/2023 because he did not meet the requirements of Section 24(b) of the Law.

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 was not entitled to benefits during the entire period on appeal.

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, claimants are expected to be capable of, available for, and actively seeking full-time work.

As an initial matter, we believe that the review examiner properly concluded that the claimant was exempt from the work search requirement under G.L. c. 151A, § 24(b), beginning the week of March 5, 2023, because he had accepted an offer of employment on March 2, 2023, and was scheduled to begin that job on March 27, 2023. Consolidated Finding # 5; *see* Board of Review Decision 0019 9732 45 (Aug. 7, 2017). However, the review examiner erroneously denied the claimant benefits on other grounds.

The claimant was out of the country on vacation starting the Wednesday of the week beginning March 5, 2023. He did not return until Tuesday, March 21, 2023. Consolidated Finding # 7. Based on this information, the review examiner concluded that the claimant was not available for work during the three-week period between March 5, 2023, and March 25, 2023, as required by G.L. c. 151A, § 24(b).

The claimant's eligibility during the three weeks at issue depends on the number of days in each week that he was available for work. *See* Board of Review Decision 0066 4492 59 (Sept. 29, 2022). We agree that the claimant was not available for work within the meaning of G.L. c. 151A, § 24(b), during the week of March 12, 2023, as he was out of the country for the entirety of the week. Additionally, we agree that the claimant was not available for work during the week beginning March 5, 2023, as he was out of the country for the majority of the days during that week. However, as the claimant returned from his trip on Tuesday, March 21, 2023, he was in Massachusetts and available for work on four of the seven days during the week of March 19, 2023. Because he was available for work during the majority of that week, he met the availability requirement of G.L. c. 151A, § 24(b).

We, therefore, conclude as a matter of law that the claimant has met the availability requirement of G.L. c. 151A, § 24(b), only during one of the three weeks at issue in this matter.

The review examiner's decision is affirmed in part and reversed in part. The claimant is denied benefits for the period between March 5, 2023, and March 18, 2023. He is entitled to receive benefits for the week of March 19, 2023, if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 18, 2023



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