

The claimant, who was issued a Resident Alien card as a child, had permanent authorization to work in the United States and is, therefore, available to work under 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: 0080 3375 02

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 May 21, 2023. On September 9, 2023, the DUA issued a Notice of Disqualification, providing that the claimant was not entitled to benefits because she had not established that she was legally permitted to work in the United States. 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 October 18, 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 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 that she 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 claimant provided a copy of her Resident Alien Card and several other documents to verify her identity.

Findings of Fact

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

1. The claimant filed an initial claim for unemployment benefits effective May 21, 2023.
2. The claimant is not a United States citizen.
3. The claimant is a citizen of the country of Portugal.

4. The claimant was born February 21, 1960, with the name [Birth Name].
5. [Portuguese Name] translates to [English Name] in the English language.
6. The claimant's Resident Alien card number A34283736 reflects the claimant's name as [Birth Name]. The claimant's signature on the card is [Signature Name]. The card was issued to the claimant when she was twelve years of age by the U.S. Department of Justice-Immigration and Naturalization Service.
7. The claimant's initial Social Security card was issued in the name of [Documentation Name].
8. In the early 1980's, the claimant went to the U.S. Department of Justice-Immigration and Naturalization Service, and she was told that she didn't need an updated Resident Alien card because her fingerprint and signature were on the card.
9. The claimant was married on January 23, 1982. Her married name is [Married Last Name].
10. After the claimant was married, she did not update her Resident Alien card to reflect her new name.
11. The claimant's current Social Security card was issued in the name of [Married Name].
12. The claimant's Massachusetts Driver's License was issued January 20, 2023, and expires on February 21, 2027. The license was issued to her under the name [Married Name].
13. On September 9, 2023, the Department of Unemployment Assistance issued the claimant a Notice of Disqualification which notified the claimant she was not entitled to benefits under Section 25(a) of the Law beginning May 21, 2023, and for an indefinite period of time thereafter because she failed to establish that she was legally permitted to work in the United States (the Determination).
14. The claimant appealed the Determination.

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. After 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 conclude that

the totality of the evidence in the record establishes that the claimant is authorized to work in the United States.

The review examiner initially 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

As a state agency administering the unemployment insurance program, 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, a claimant who certifies that she is not a citizen of the United States must verify her identity and show that she has been legally authorized to work during the benefit year of her claim by the appropriate U.S. agency. This is currently the U.S. Citizenship and Immigration Services (USCIS) under the Department of Homeland Security (DHS).

In her findings, the review examiner has shown that the claimant’s name has changed over the years. Upon entry into this country, the claimant went by her maiden name of [Signature Name] or [Documentation Name] as evident by her signatures on her Resident Alien card and her government issued Social Security card. Findings of Fact ## 6 and 7. When she wed in 1982, the claimant chose to take her husband’s surname [Married Last Name]. Finding of Fact # 9. Her state issued driver’s license and Social Security card reflect her married name.¹ Findings of Fact ## 11 and 12. Based on these findings, we are satisfied that [Birth Name], [Signature Name], [Documentation Name], and [Married Name] are the same person.

The findings also provide that the claimant, born in 1960, received a Resident Alien card from the U.S. Immigration and Naturalization Service (INS)² when she was 12 years old. *See* Findings of

¹ We note that Exhibit # 1, which contains the claimant’s initial Social Security card and the reissued one reflecting her married name, both contain the same identification number. While not explicitly incorporated into the review examiner’s findings, this exhibit 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).

² On March 1, 2003, USCIS assumed responsibility for the immigration service functions of the federal government. The Homeland Security Act of 2002 dismantled the Immigration and Naturalization Service and separated the agency into three components within the Department of Homeland Security.

Fact ## 4 and 6. The back of the Resident Alien card shows that she became a resident of the United States on February 15, 1973.³ At the time, a Resident Alien card meant that the bearer had been granted permanent authorization to work in the United States.⁴ Thus, the claimant was legally authorized to work in the United States during her benefit year.

We, therefore, conclude as a matter of law that the claimant was available for work as meant under G.L. c. 151A, § 24(b).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending May 27, 2023, and for subsequent weeks if otherwise eligible.

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.

DY/rh

³ See Exhibit 8, which includes a photograph of the back of the claimant's original Resident Alien card. This image is also part of the unchallenged evidence introduced at the hearing.

⁴ See <https://www.uscis.gov/about-us/our-history/stories-from-the-archives/the-colorful-history-of-the-green-card> (May 6, 2024).