

**Claimant's work search log, continued claims summaries, and testimony establish that he satisfied the DUA's work search requirements for all but one week that he certified for benefits. He is eligible for benefits pursuant to G.L. c. 151A, § 24(b), for all but that one week.**

**Board of Review  
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**Issue ID: 0080 9543 19**

### 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 we affirm in part and reverse in part.

On July 10, 2023, the claimant filed a claim for unemployment benefits with the DUA, effective July 9, 2023, which was denied in a determination issued on August 25, 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 and denied benefits in a decision rendered on September 23, 2023. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not engaged in an active work search and, thus, was disqualified 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 afford the claimant an opportunity to present additional evidence about his work search efforts. The claimant attended the remand hearing. Thereafter, the review examiner issued her 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 to deny benefits because the claimant failed to meet DUA's work search requirements 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 and credibility assessment are set forth below in their entirety:

1. Prior to filing for unemployment benefits, the claimant worked as a retail consultant for an international liquidation and investment company (ER-I). The claimant works [sic] a full time, varied schedule for ER-I, approximately sixty hours per week, and earns [sic] \$2,600.00 per week in gross earnings.

2. The claimant's most recent contract for ER-I ended on 6/30/2023, when the contract concluded.
3. While working for the employer, the claimant works [sic] on-call as a retail associate for a retail store (ER-II). The claimant has worked for ER-II since on or about 2019. Over the course of his employment for ER-II, the claimant worked an average of three to four hours per week. He earns \$11.00 per hour working for ER-II.
4. Since 2017, the claimant works part-time as a driver through two web-based applications. When the claimant does not have a contract with ER-I, he devotes about four to five hours per day, over four to five days per week, working as a driver.
5. The claimant also has prior experience working in retail management.
6. On 7/10/2023, the claimant filed an unemployment claim with the Department of Unemployment Assistance (DUA), effective 7/9/2023.
7. During the period beginning 7/9/2023 and subsequent weeks thereafter, the claimant had no physical or mental conditions or restrictions impacting his ability to work.
8. During the week of 7/9/2023 to 7/18/2023, the claimant placed no limitations on his availability to work a full-time schedule.
9. During the period beginning 7/19/2023 and through 8/1/2023, ER-I recalled the claimant to complete a contract. The claimant was not available to work elsewhere during this period because he was working full-time for ER-I.<sup>1</sup>
10. During the weeks beginning 8/2/2023 through 8/28/2023, the claimant placed no limitations on his availability to work a full-time schedule.
11. During the period beginning 8/29/2023 through 9/1/2023, the claimant was traveling out of the country on vacation, thereby limiting his availability to work.<sup>2</sup>
12. During the period beginning 9/2/2023 and subsequent weeks thereafter, the claimant placed no limitations on his availability to work a full-time schedule.

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<sup>1</sup> We note that the claimant did not request benefits for this timeframe. See Remand Exhibit 5, which consists of the claimant's weekly continued claims summaries between July 9, 2023, and October 2023. 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).

<sup>2</sup> Id.

13. During the week of 7/9/2023 through 7/15/2023, the claimant was not actively seeking work because he was contacting ER-I for further employment.
14. During the period beginning 7/9/2023 and subsequent weeks thereafter, the claimant did maintain a work search log.
15. During the period beginning 7/16/2023 and subsequent weeks thereafter, the claimant was actively seeking work.
16. On 8/25/2023, the DUA sent the claimant a Notice of Disqualification stating he was disqualified from receiving unemployment benefits from the period beginning 8/13/2023 and indefinitely thereafter, because he did not meet the requirements of Section 24(b) of the Law. The claimant's appeal is from this determination.

#### Credibility Assessment:

During the remand hearing, additional evidence was added to the record, including the claimant's Work Search Activity Logs for the period beginning 7/2/2023 and through 11/18/2023 and Continued Claims Summaries for the period beginning 7/9/2023 and through 10/21/2023.

At the remand hearing, the claimant attested that he kept his work logs weekly, keeping notes and records of his weekly work search activities throughout the period beginning on 7/2/2023 and subsequent weeks thereafter. He added that "you can save a job" through "Indeed and Zip Recruiter". The claimant offered testimony that he transposed his job search onto the work log during the first weeks he certified for benefits in July of 2023 and then again beginning after he returned from vacation in September of 2023. The claimant candidly stated that he "got a little lax" transposing his job search activities during the month of August 2023.

Initially, the claimant provided unresponsive testimony when directly asked when he prepared the Work Search Activity Log that he submitted with his appeal to the Board of Review. Later, the claimant clarified his testimony, stating that after the initial hearing, he "printed out multiple sheets so I can write them on there...". Given this testimony, it is determined that the claimant did prepare the Work Search Activity Log specifically to support his appeal.

The record shows that the entries on the claimant's Work Search Activity Logs do not exactly match the activities listed in his Continued Claims Summaries. The claimant provided direct testimony regarding specific weeks and the job search activity he performed. Despite the claimant's generally evasive testimony, it is determined that he did maintain the information required to transpose accurate job search activity information onto the Work Search Activity Logs. As such, the Work Search Activity Logs submitted by the claimant are deemed credible.

#### 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 original 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. We further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented. However, as discussed more fully below, while the consolidated findings demonstrate that the claimant did not engage in an active work search for the week beginning July 9, 2023, they do show that the claimant satisfied the DUA's work search requirements as of the week beginning July 16, 2023.

Because the review examiner concluded that the claimant did not show that he was engaged in active work search efforts, we analyze his eligibility for benefits 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 . . . .

Pursuant to G.L. c. 151A, § 24(b), individuals seeking unemployment benefits are required to show that they have engaged in an active work search effort to find new employment. The Supreme Judicial Court defers to the DUA to set the standard for what constitutes an active work search. Grand v. Dir. of Division of Employment Security, 393 Mass. 477, 480-481 (1984). Whether an unemployed person is unable to obtain work is "largely a question of fact as to which the burden rests on the unemployed person to show that his continued unemployment is not due to his own lack of diligence." Evancho v. Dir. of Division of Employment Security, 375 Mass. 280, 282-283 (1978).

The DUA expects a claimant to make an active and realistic search for work, taking steps that a reasonable person in the claimant's circumstances would take if interested in obtaining work. Consideration is given to the customary methods of obtaining work in the claimant's usual occupation, or in work for which the claimant is suited. *See* DUA Adjudication Handbook (revised Mar. 1, 2020), Chapter 4(A)(1). To meet the active work search requirement, the DUA expects claimants to complete at least three work search activities per week. *See* DUA Adjudication Handbook, chapter 4, § 4(B). The DUA also asks claimants to maintain a log of their job search, including a list of all contacts made, the dates of such contacts, the names, addresses, and phone numbers of any individuals contacted, and the results of each contact. *See* DUA Adjudication Handbook, Chapter 4, Section 4, Subsections A and B (March 1, 2020).

The review examiner originally concluded that the claimant failed to meet the agency's work search requirements because he had not maintained a work search log as required by the DUA. In his appeal to the Board, the claimant disputed that he did not maintain a work search log and presented a work search log for consideration. We remanded the matter to afford the claimant an opportunity to provide additional information about his work search efforts. Accordingly, the claimant's work search log was entered into the hearing record in two separate parts, as Remand

Exhibits 3 and 7. The review examiner also entered ten of the claimant's weekly continued claims summaries from the week beginning July 9, 2023, through October, 2023, as Remand Exhibit 5.

Notwithstanding the suggestion in the review examiner's credibility assessment that the claimant likely prepared the work search log to support his Board appeal, the consolidated findings now show that the claimant had maintained the log since the week beginning July 9, 2023, and that he had been actively searching for work since the week beginning July 16, 2023. Consolidated Findings ## 14–15. However, the review examiner also found that the claimant did not engage in an active work search for the week beginning July 9, 2023. Consolidated Finding # 13.

At first glance, Consolidated Findings ## 13 and 14 appear to contradict one another. In his continued claims summary for the week beginning July 9, 2023, the claimant reported that he had not engaged in three work search activities for that week. Yet, in his work search log for the same week, the claimant reported that he submitted three employment applications on July 10, 2023, and July 12, 2023. Remand Exhibits 3 and 5.<sup>3</sup> As a result, both consolidated findings are supported by the record.

With the findings and record before us, we are satisfied that the claimant has demonstrated that he has actively searched for new employment since the week beginning July 16, 2023. Apart from the noted inconsistency between the claimant's work log entries and continued claims summary for the week beginning July 9, 2023, the rest of the claimant's work log entries match the entries made in his continued claims summaries. Even if we decided to apportion less weight to the work log compared to other evidence in the record, we believe that the claimant would still meet the DUA's work search requirements through his weekly certifications. *See* Board of Review Decision 0026 4550 04 (Dec. 24, 2018) (a claimant, whose continued claims summaries are exhibits, and are in the DUA's UI Online record-keeping system, showed that he entered detailed work search efforts each week, and has fulfilled work search requirements).

We, therefore, conclude as a matter of law that the claimant failed to engage in an active work search for the week beginning July 9, 2023. We further conclude that from the week beginning July 16, 2023, he has conducted an active work search pursuant to G.L. c. 151A, § 24(b).

The review examiner's decision is affirmed in part and reversed in part. The claimant is denied benefits for the week beginning July 9, 2023. However, the claimant is entitled to receive benefits from the week beginning July 16, 2023, and for subsequent weeks, if otherwise eligible.

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



Paul T. Fitzgerald, Esq.  
Chairman

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<sup>3</sup> These exhibits are also part of the unchallenged evidence in the record.



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](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.

JMO/rh