

The claimant was not in unemployment pursuant to G.L. c. 151A, §§ 29 and 1(r), when working full-time. After the claimant and the employer agreed to change her title and hours to allow her to search for other work, the claimant declined to perform suitable work for the employer. Therefore, she was not in unemployment after her hours and title were changed.

**Board of Review
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Issue ID: 0081 1067 55

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 November 13, 2022, which was denied for the period between December 4, 2022, and June 24, 2023, in a determination issued on October 3, 2023. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by both parties, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on February 14, 2024. 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 during the weeks of December 4, 2022, through June 24, 2023, 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 subsidiary findings of fact pertaining to the claimant's unemployment status. 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, which concluded that the claimant was not in unemployment during the weeks at issue because she was employed full-time as a loan officer, 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. Beginning in March 2020, claimant worked full-time (40 hours weekly) as a loan partner II for the employer, a mortgage company. The claimant's hourly rate was \$15.00 plus a bonus per closed loan.

2. The employer considers 32 hours per week as full-time. The employer requires an employee to work full-time in order to receive benefits, including health insurance and 401k contributions.
3. Subsequently, on or about May 7, 2020, the claimant reduced her schedule to 10 hours a week due to childcare restrictions arising from [sic] COVID-19 pandemic.
4. Beginning in August 2020, the claimant returned to working full-time (40 hours weekly) with a revised compensation package, that included bonuses and commissions as a Loan Officer.
5. As a Loan Officer, the claimant assisted prospective borrowers in obtaining loans.
6. The claimant is a federally licensed mortgage loan originator and licensed in Massachusetts and in Connecticut. The employer sponsored the claimant's license. A Loan Officer is required to have a valid license.
7. Beginning in February 2021, the claimant agreed to a new position as an Office Supervisor, with an annual salary of \$65,000, with a bonus structure. The claimant continued working full-time.
8. Beginning on December 13, 2021, the claimant and the employer agreed the claimant's position would change to a Senior Loan Partner/Loan Officer, with an hourly rate of \$31.00 plus bonuses and commissions as a Loan Officer. The claimant continued working 40 hours weekly.
9. In September 2022, before September 19, 2022, the claimant requested to reduce her hours from 40 to 32 per week at the same rate of pay, and the employer agreed. The employer and the claimant agreed the claimant would be eligible for Loan Officer commissions, but without a bonus structure.
10. Beginning on September 19, 2022, the claimant worked 32 hours weekly at an hourly rate of \$31.00 plus commissions as a Loan Officer.
11. From November 14, 2022, through December 2, 2022, as a condition of her continuing employment, the claimant was on an employer mandated unpaid leave of absence.
12. On November 14, 2022, the claimant filed a claim for unemployment benefits with the Department of Unemployment Assistance, with an effective date of November 13, 2022. The claimant reported she worked full-time for the employer. The DUA determined the claimant's weekly benefit amount was \$835.00 and her earnings disregard was \$278.33, totaling \$1,113.33.

13. On December 5, 2022, the claimant returned to work at a different office location. Upon her return, the claimant did not want to continue working for the employer. The claimant believed the required leave of absence was unfair and felt mistreated by the employer. The claimant returned to work because she did not want to lose her employee benefits and could not afford to be unemployed.
14. For the week beginning December 4, 2022, through the week beginning January 15, 2023, the claimant worked 32 hours weekly and earned at least \$992.00 in gross wages.
15. Subsequently, the claimant and the office manager discussed separating. The office manager and the claimant agreed the claimant could continue to receive employee benefits, if she worked 8 hours per week as a Loan Officer Assistant at \$31.00 per hour and retained her position as a commission-only Loan Officer. The employer would continue to sponsor the claimant's license.
16. The claimant was not eligible for benefits if she was not employed as a Loan Officer. For the week beginning December 4, 2022, and until she quit her employment, the claimant received the employer's employee benefits, including health insurance and 401k contributions.
17. The employer would not have sponsored the claimant's license if she was not a full-time employee.
18. Beginning the week of January 22, 2023, and until the week ending June 24, 2023, the claimant worked at least 8 hours per week, or redeemed 8 hours of paid time off, as a Loan Officer Assistant.
19. Beginning the week of January 22, 2023, and until the week ending June 24, 2023, the claimant was employed as a Loan Officer, a commission-only position. The claimant worked zero hours per week as a Loan Officer.
20. On June 26, 2023, the claimant quit her employment to accept a job with a different mortgage company.
21. The last day the claimant physically worked for the employer was June 20, 2023.
22. From January 22, 2023, to June 24, 2023, the claimant was capable of working full-time. The claimant had no physical or mental impairments that prevented her from working full-time.
23. From January 22, 2023, to June 24, 2023, the claimant was available for full-time work.
24. From January 22, 2023, to June 24, 2023, the claimant searched for work in the mortgage industry almost every day. The claimant searched for work by

networking with colleagues and utilizing online job search websites. There was a lack of work in the mortgage industry, due to interest rate increases resulting in fewer loans. Many companies laid off employees and available positions were limited.

25. For the week beginning December 11, 2022, through the week beginning January 8, 2023, the claimant did not submit weekly certifications requesting benefits.
26. For the week beginning January 15, 2023, through the week beginning, June 18, 2023, the claimant submitted weekly certifications requesting benefits. The claimant certified she worked no hours and earned no wages.
27. In 2022, the claimant earned \$78,640.00 in gross wages, which included \$7,600 in bonuses and \$12,295 in commissions.
28. For the pay period beginning November 27, 2022, through December 10, 2022, the employer issued the claimant \$3,760.00 in Loan Officer commissions.
29. In 2023, the claimant earned no commissions as a Loan Officer because she did not originate or close any loans. In 2023, there was nothing that prevented the claimant from earning commissions as a Loan Officer.
30. At all relevant times, the employer had full-time commission-only Loan Officer work available.
31. The claimant's paystubs beginning on October 16, 2022, through June 10, 2023, list "basis of pay: hourly."

[Credibility] Assessment:

In this case, the parties agree, in 2023, the claimant performed no work, received no wages, and earned no commissions as a Loan Officer. As such, the claimant worked zero hours per week as a Loan Officer. Further, the parties agree, other than market forces, there was nothing preventing the claimant from originating loans, and thereby earning commissions as a Loan Officer. There is no evidence to suggest the claimant had any physical or mental impairments that limited her ability to work full-time for the time at issue. Moreover, the only restriction on the claimant's weekly availability was the 8-hour day, [sic] she worked as a Loan Officer Assistant. Although the claimant maintains she was laid off in November 2022, the parties do not dispute that as a form of disciplinary action and as a condition of her continuing employment, the employer required the claimant to take a leave of absence beginning on or about November 11, 2022, and ending on or about December 4, 2022. The claimant testified the disciplinary action was unfair and she was mistreated by the employer, and as a result, no longer wanted to continue working for the employer. The claimant's belief, not the allegations, is credited, which corroborates her testimony that she did not want to work for the employer

but continued due to financial insecurity and an inability to find new employment. Further, given the claimant's eagerness to no longer be associated with the employer, and where she only quit her position after securing new employment, her testimony that she actively searched almost every day for work is logical, and therefore 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 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. As discussed more fully below, we agree with the review examiner's legal conclusion that the claimant was not entitled to benefits between December 4, 2022, through June 24, 2023.

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:

(1) "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

(2) "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.

Pursuant to these provisions, claimants are only eligible for benefits if they are physically capable of, available for, and actively seeking full-time work, and they may not turn down suitable work.

When the claimant returned to work from a leave of absence on December 5, 2022, she resumed working full-time for the employer. Consolidated Findings ## 2 and 14. Because she was working full-time, the claimant was not available for other full-time work and was not searching for work. *See* Consolidated Findings ## 23 and 24. Therefore, she was not in total or partial unemployment pursuant to G.L. c. 151A, §§ 29 and 1(r), between December 4, 2022, and January 21, 2023.

As the claimant began working substantially reduced hours for the instant employer beginning the week of January 22, 2023, we next consider whether she was in partial unemployment as of that date. *See* Consolidated Findings ## 18 and 19.

On or prior to January 22, 2023, the claimant and the employer agreed that the claimant could continue receiving employment benefits if she worked 8 hours per week as a Loan Officer Assistant and retained her position as a commission-only Loan Officer. Consolidated Finding # 15. Thereafter, however, the claimant chose not to perform any work in her capacity as a Loan Officer. Consolidated Finding # 19. The claimant's disagreement with the employer's decision to put her on a leave of absence in November, 2022 did not render work as a Loan Officer unsuitable. Thus, the claimant has not shown good cause for declining suitable work. *See* Consolidated Findings ## 13, 29, and 30. Because she declined suitable work, the claimant was not in unemployment within the meaning of G.L. c. 151A, §§ 29(a) and 1(r), during the period between January 22, 2023, and June 24, 2023.

The claimant separated from her employment on June 26, 2023. Consolidated Finding # 20. Therefore, her eligibility for benefits beginning the week of June 25, 2023, is governed by another section of law that is not presently before the Board.

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), between December 5, 2022, and June 24, 2023.

The review examiner's decision is affirmed. The claimant is denied benefits for the weeks between December 4, 2022, and June 24, 2023.

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 30, 2024



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.

LSW/rh