

The claimant declined thirty-one offers of work during the nine weeks before she started a new, full-time position and was unable to provide evidence showing good cause for declining such work or that such work was unsuitable. Held she was not in unemployment within the meaning of G.L. c. 151A, § 1(r), during the weeks she declined suitable work or during the weeks she was working full-time for her new employer. The claimant was, therefore, not entitled to benefits.

**Board of Review
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Issue ID: 0081 5735 93

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 12, 2023, which was denied in a determination issued on December 15, 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 March 16, 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 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 additional evidence pertaining to the claimant's unemployment status. Both parties 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, which concluded that the claimant was not in unemployment because she has been restricting her availability for work, 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. On July 16, 2022, the claimant started working on a per diem/part-time basis for the instant employer, a medical care service provider, as Care Giver. The claimant travels to the instant employer's clients to perform care services

including at residential locations and medical facilities. The claimant finds out if work is available for the claimant with the instant employer's establishment by receiving text messages and calls from the instant employer's establishment and also checking on the employer's internet-based application. The claimant's schedule varies at the instant employer's establishment.

2. The claimant is paid \$20.00 per hour by the instant employer.
3. The claimant's supervisor at the instant employer's establishment is the Care Coordinator.
4. The claimant worked full time for the 1st employer from January 9, 2023, until November 13, 2023, as a Case Manager. The claimant was separated from the 1st employer's establishment in November 2023. The claimant's employment with the instant employer was subsidiary to her part-time employment with the 1st employer's establishment.
5. The claimant filed an initial unemployment claim effective the week beginning November 12, 2023 (hereinafter 2023-01 initial unemployment claim). Both the instant employer and the 1st employer are base period employers on this claim.
6. The claimant has been physically capable of working since the week beginning November 12, 2023.
7. The claimant has continued to work part-time for the instant employer since the week beginning November 12, 2023.
8. The claimant has not been available for all work the instant employer has had for the claimant since the week beginning November 12, 2023, and has been restricting her availability to work at the instant employer's establishment.
9. On November 17, 2023, the instant employer offered the claimant a shift running from 11:00 a.m. to 1:00 p.m. The claimant turned down this offered shift. The claimant informed the employer that the claimant was out of state.
10. On December 12, 2023, the instant employer offered the claimant a shift running from 7:30 a.m. until 10:30 a.m.
11. On December 23, 2023, the claimant turned down a 9 hour shift the instant employer offered the claimant. The claimant informed instant employer she was out of state. The claimant was out of state in Connecticut.
12. On January 11, 2024, the claimant turned down a shift running from 10:00 a.m. to 3:15 p.m. offered by the instant employer.
13. On January 14, 2024, the claimant did not respond to the instant employer's offer of a shift running from 7:30 a.m. to 10:30 a.m.

14. On January 16, 2024, the claimant informed the employer that she was not available for open shifts.
15. On January 21, 2024, the instant employer offered the claimant an overnight shift approximately 4 minutes away from her home. The claimant informed the employer she was not available as she was out of the city.
16. On January 28, 2024, the instant employer offered the claimant a shift running from 11:00 a.m. to 1:00 p.m. The claimant informed the employer that she would only take the shift after 2:00 p.m.
17. On February 5, 2024, the employer offered the claimant a shift from 6:00 a.m. to 6:00 p.m. The claimant turned down his shift saying she had another client until 2:00 p.m.
18. The claimant subsequently informed the instant employer most recently that she was only available for shifts after 3:00 p.m.
19. The claimant has not been available for all work the instant employer has for her for various reasons including being out of state, or conflict with another job that the claimant subsequently started working on or about January 12, 2024.
20. The DUA issued a Notice of Disqualification denying the claimant benefits under Sections 29(b) and 1(r) of the Law commencing the week beginning November 12, 2023, and until she met the requirements of the Law in connection with her employment at the instant employer's establishment. In response to the Notice of Disqualification, the claimant appealed.
21. The employer did offer the claimant work during the week of November 12, 2023, through November 18, 2023. During this week, the claimant did accept some shifts offered by the employer. During this week, the claimant was not out-of-state. During this week, the claimant did decline other shifts that were offered to the claimant by the employer. On October 23, 2023, and November 7, 2023, the employer offered the claimant a shift for November 18, 2023, running from 7:30 a.m. until 10:30 a.m. The claimant declined the November 18, 2023, shift offered by the employer. The claimant does not have an explanation about the reason the claimant denied the shift of November 18, 2023.
22. The employer offered the claimant work during the week of November 19, 2023, through November 25, 2023. On October 30, 2023, the employer offered the claimant a shift for November 19, 2023, to run from 7:15 a.m. to 10:15 a.m. On October 30, 2023, the employer offered the claimant a shift to work for November 24, 2023, to run from 7:30 a.m. to 10:30 a.m. On November 7, 2023, the employer offered the claimant shifts for November 19, 2023, November 24, 2023, and November 25, 2023, from 7:30 a.m. to 10:30 a.m. During this week,

the claimant did not accept any shifts offered by the employer. The claimant declined all the shifts the employer offered the claimant for this week. During this week, the claimant was out-of-state from November 21, 2023, through November 22, 2023. The claimant has no explanation as to why she declined shifts for this week other than being out of state from November 21, 2023, to November 22, 2023.

23. The employer offered the claimant work during the week of November 26, 2023, through December 2, 2023. On November 7, 2023, the employer offered the claimant work shifts for November 26, 2023, November 29, 2023, December 1, 2023, and December 2, 2023. The November 26, 2023, work shift offered was from 7:30 a.m. to 10:30 a.m. The November 29, 2023, work shift offered was from 3:15 p.m. to 7:00 p.m. The November 30, 2023, work shift offered was from 3:15 p.m. to 7:00 p.m. The December 1, 2023, shift offered was from 7:30 a.m. to 10:30 a.m. and 3:15 p.m. to 7:00 p.m. The December 2, 2023, shift offered was from 7:30 a.m. to 10:30 a.m. During this week, the claimant did accept some shifts offered by the employer. During this week, the claimant declined the work shifts offered of November 26, 2023, December 1, 2023, and December 2, 2023, that ran from 7:30 a.m. to 10:30 a.m. The claimant has no explanation as to why she declined shifts for this week.
24. The employer offered the claimant work during the week of December 3, 2023, through December 9, 2023. The employer offered the claimant a work shift for December 6, 2023, to run from 3:15 p.m. to 7:00 p.m. The employer offered the claimant a work shift for December 8, 2023, to run from 7:30 a.m. to 10:30 a.m. The employer offered the claimant a work shift for December 9, 2023, to run from 8:00 a.m. to 12:00 p.m. During this week, the claimant did accept some shifts. During this week, the claimant did decline shifts offered by the employer. The claimant declined the following offered work shifts for this week: December 8, 2023, from 7:30 a.m. to 10:30 a.m., December 9, 2023, from 7:30 a.m. to 10:30 a.m., December 9, 2023, from 8:00 a.m. to 12:00 p.m. The claimant has no explanation as to why she declines shifts for this week.
25. The employer offered the claimant work during the week of December 10, 2023, through December 16, 2023. During this week, the claimant did not accept any shifts offered by the employer. The claimant has no explanation as to why she declined the work shift offered by the employer for December 12, 2023, from 7:30 a.m. to 10:30 a.m. During this week, the employer also offered the claimant to work shifts on December 10, 2023, from 8 a.m. to 11 a.m., December 15, 2023 from 7:30 a.m. until 10:30 a.m., December 16, 2023 from 7:30 a.m. to 10:30 a.m., and December 16, 2023 from 8 a.m. to 12 p.m. The claimant was available to work the remainder of the week of December 10, 2023. The claimant offered no explanation as to why she decided the shifts this week.
26. The employer offered the claimant work during the week of December 17, 2023, through December 23, 2023. The employer offered the claimant a work

shift for December 17, 2023, to run from 7:30 a.m. to 10:30 a.m. The employer offered the claimant a work shift for December 18, 2023, to run from 12:00 p.m. to the following day December 19, 2023, at 7:00 a.m. The employer offered the claimant a work shift for December 22, 2023, to run from 7:30 a.m. to 10:30 a.m. The employer offered the claimant a work shift for December 23, 2023, to run from 11:00 a.m. to 3:00 p.m. During this week, the claimant did accept some shifts offered by the employer. During this week, the claimant declined the following shifts that were offered by the employer: December 17, 2023, December 22, 2023, and December 23, 2023. The claimant declined the shift of December 17, 2023, that was offered by the employer as this day was a Sunday and the claimant was in church. The claimant was out-of-state in [City A] from December 22, 2023, to December 25, 2023, on a family trip which caused the claimant to decline shifts offered by the employer while the claimant was in [City A].

27. The employer offered the claimant work during the week of December 24, 2023, through December 30, 2023. During this week, the claimant did not accept any shifts offered by the employer. During this week, the claimant was out-of-state in [City A] on a family trip until December 25, 2023, which the family trip had started on December 22, 2023. The claimant had left the employer a message that the claimant was out-of-state. For each date this week, the claimant was not out of state, the claimant was not available to work for the employer as the claimant declined work for the employer. The employer offered the claimant a work shift for December 24, 2023, running from 8:00 a.m. to 11:15 a.m. The employer offered the claimant a work shift for December 29, 2023, running from 7:30 a.m. to 10:30 a.m. The employer offered the claimant a work shift for December 30, 2023, running from 7:30 a.m. to 10:30 a.m. The claimant offered no explanation as to why she declined the shifts offered of December 29, 2023, and December 30, 2023.
28. The employer offered the claimant work during the week of December 31, 2023, through January 6, 2024. The employer offered the claimant a work shift for January 5, 2024, running from 6:00 p.m. to 8:00 p.m. The employer offered the claimant a work shift for January 6, 2024, to run from 5:00 p.m. to 8:00 p.m. The claimant declined the shifts of January 5, 2024, running from 6:00 p.m. to 8:00 p.m. and the shift of January 6, 2024, running from 5:00 p.m. to 8:00 p.m. that was offered by the employer. The claimant offered no explanation as to why she declined the offered shifts for this week.
29. The employer offered the claimant work during the week of January 7, 2024, through January 13, 2024. The employer offered the claimant a work shift for January 7, 2024, running from 5:15 p.m. to 8:15 p.m. The employer offered the claimant a work shift for January 8, 2024, running from 6:00 p.m. to 8:00 p.m. The employer offered the claimant a work shift for January 9, 2024, running from 5:00 p.m. to 8:00 p.m. The employer offered the claimant a work shift for January 12, 2024, running from 10:00 a.m. to 3:15 p.m. During this week, the claimant did not accept any shifts offered by the employer. During this week,

the claimant declined all the shifts that the employer offered her. The claimant declined the shift offered by the employer for January 12, 2024, due to the claimant starting full-time work with the 2nd employer which the on-boarding process for the 2nd employer started on January 9, 2024, and involved several hours of testing. The claimant provided no other information about why she declined the employer's offers of work this week.

30. On January 12, 2024, the claimant started working for the 2nd employer as a Home Aide/Certified Nursing Assistant. The claimant was hired to work full-time for the 2nd employer. The claimant was initially scheduled to work for the 2nd employer Monday through Friday from 10:00 a.m. to 2:00 p.m. The claimant's schedule with the 2nd employer increased to approximately 42 to 43 hours per week. The claimant subsequently was working for the 2nd employer for a period of time Monday through Friday from 7:30 a.m. to 6:00 p.m. The claimant's most recent schedule with the 2nd employer is Monday through Friday from 7:30 a.m. to 6:00 p.m. The claimant has been working full-time for the 2nd employer (as of the date of Remand Hearing) since approximately the 2nd week the claimant started working for the 2nd employer. The claimant is paid \$21.00 per hour by the 2nd employer.
31. Since the date the claimant began working her new full-time position with the 2nd employer, the instant employer has offered the claimant shifts that did not conflict with her schedule for her new full-time job. The instant employer is not aware of the details of the claimant's schedule with the 2nd employer. The instant employer did offer the claimant a shift for January 24, 2024, and January 25, 2024, from 11:00 a.m. to 6:45 p.m.; the claimant did not work this shift as the claimant felt the commute was too far as it was 1 hour and 15 minutes to commute.
32. The employer has offered the claimant the following shifts that the claimant has also declined: January 29, 2024 from 11:00 a.m. to 1:00 p.m., January 30, 2024 from 11:00 a.m. to 1:00 p.m., February 5, 2024, from 11:00 a.m. to 1:00 p.m., March 5, 2024, from 11:00 a.m. to 1:00 p.m., March 9, 2024, from 12:00 p.m. until 6:00 p.m., March 11, 2024, from 7:00 p.m. until March 12, 2024, at 7:00 a.m., March 12, 2024, from 8:30 a.m. to 5:30 p.m., March 12, 2024 from 2:00 p.m. to 8:00 p.m., March 27, 2024, from 12:00 p.m. to 5:00 p.m., March 30, 2024, from 9:00 a.m. to 3:00 p.m., March 31, 2024, from 7:00 a.m. to 7:00 p.m., April 12, 2024, from 7:00 a.m. to 1:00 p.m., April 14, 2024, from 8:00 a.m. to 8:00 p.m., April 16, 2024, from 10:00 a.m. to 10:00 p.m., April 19, 2024, from 7:15 a.m. to 11:00 p.m., April 24, 2024, from 8:00 a.m. to 8:00 p.m., May 3, 2024, from 10:00 a.m. to 4:00 p.m., May 17, 2024, from 10:00 a.m. to 4:00 p.m., and May 28, 2024, a short term live in care for 5-7 days. On June 6, 2024, the employer offered the claimant to work on Wednesdays, Thursdays, and Fridays on a permanent basis for a shift running from 8:30 a.m. to 4:30 p.m.; the claimant also declined this offer of work by the employer due to the claimant already working full-time for the 2nd employer.

33. The claimant has accepted some shifts the instant employer has offered the claimant since the claimant started working for the 2nd employer on January 12, 2024.
34. The last shift the claimant worked and accepted from the instant employer (as of the date the Remand Session) was a shift on January 24, 2024, that was scheduled to run from 11:00 p.m. until 8:00 a.m. on January 25, 2024, which the claimant left early from work at 6:45 a.m. not working until 8:00 a.m. as initially planned.
35. The claimant has been declining shifts from the instant employer's establishment since starting her full-time job with 2nd employer on January 12, 2024, due to a combination of the shifts conflicting with her full-time job at the 2nd employer's establishment and the claimant deciding that the commute to the jobs offered by the 2nd employer are too far.

Credibility Assessment:

During the remand hearing sessions, the claimant contended that she was not offered a majority of the shifts that the employer had testified that claimant was offered by the employer and declined. However, the employer's contention not [sic] the contrary is assigned more weight where the employer's testimony was very specific compared to the claimant's testimony regarding the offered shifts. The employer's overall testimony is assigned more weight than the overall testimony of the claimant where the employer's overall testimony was also more specific and easier to follow compared to the overall testimony of the claimant during the hearing.

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 believe that the review examiner's consolidated findings of fact support the conclusion that the claimant is not entitled to benefits during the period at issue.

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; provided, however, that certain earnings as specified in paragraph (b) of section twenty-nine shall be disregarded. . . .

(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.

Following remand, the review examiner accepted as credible the employer’s testimony that that it offered the claimant multiple care giver shifts each week since she filed her claim for benefits. Such assessments are within the scope of the fact finder’s role, and, unless they are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. *See School Committee of Brockton v. Massachusetts Commission Against Discrimination*, 423 Mass. 7, 15 (1996). As the employer was able to provide specific testimony about the shifts it offered the claimant, we have accepted the review examiner’s credibility assessment as being supported by a reasonable view of the evidence.

Consistent with the review examiner’s credibility assessment, the consolidated findings show that the claimant declined thirty-one shifts offered by the employer in the nine-week period between the week of November 12, 2023, the effective date of her claim, and the week of January 7, 2024, during which she began working for her new employer. While the claimant declined three of these shifts because she was out of town, she was unable to provide any explanation for why she declined the remaining twenty-eight. Consolidated Findings ## 9–12, and 21–30.

The shifts offered by the employer are presumed to be suitable, as the offers were for work in the claimant’s usual care giver job. Inasmuch as the claimant was unable to explain why she declined these offers of work, she did not show good cause for declining those shifts. Considering both the frequency and number of shifts the claimant turned down, we conclude that the claimant was not in unemployment within the meaning of G.L. c. 151A, §§ 29(a) and 1(r), during the period between November 12, 2023, and January 13, 2024.

The claimant began working full-time hours for her new employer during the week of January 14, 2024, and informed the instant employer that she was no longer available to accept open shifts. Consolidated Findings ## 14, 19, and 30. As she has been working a full-time schedule since the week of January 14, 2024, the claimant was not in total or partial unemployment under G.L. c. 151A, §§ 29 and 1(r), as of that date.

We, therefore, conclude as a matter of law that the claimant has not met her burden to show that she was in unemployment within the meaning of G.L. c. 151A, §§ 29 and 1(r), beginning the week of November 12, 2023.

The review examiner's decision is affirmed. The claimant is denied benefits for the week of November 12, 2023, and for subsequent weeks, until such time as she meets the requirements of G.L. c. 151A.

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 28, 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