

The claimant, a citizen of Laos, possessed an expired Permanent Resident Card. Where DHS regulations state that the expiration date on the Permanent Resident Card merely indicates that the card needs to be renewed, and not that the bearer's work authorization has expired, the claimant has shown that he was authorized to work in the United States during his benefit year. Thus, the claimant has shown he was available to work pursuant to G.L. c. 151A, § 24(b).

**Board of Review
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Issue ID: 0082 9564 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 the DUA, effective June 9, 2024, which was denied in a determination issued on August 8, 2024. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by only by the claimant, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on August 31, 2024. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant did not establish that he was legally permitted to work in the United States during his benefit year, and thus, he 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 before the Board is whether the review examiner's decision, which concluded that the claimant's expired Permanent Resident card did not show that the claimant was legally authorized to reside and work in the United States, 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. The claimant filed a claim for unemployment benefits with the Department of Unemployment Assistance (DUA) effective June 9, 2024.
2. On August 7, 2024, the DUA checked the claimant's immigration status through SAVE with the Department of Homeland Security. The DHS response

determined, “No immigration status was located for the applicant based on the information and document provided. Documents provided do not confer immigration status.”

3. On August 8, 2024, the DUA issued the claimant a Notice of Disqualification because the claimant did not establish valid work authorization in the United States.
4. The claimant is not a citizen of the United States.
5. The claimant has lived in the United States since 1981.
6. The claimant served in the United States military.
7. The claimant has a permanent resident card which expired March 30, 2016, and was renewed until September 2022.
8. The claimant has a Social Security card.
9. The claimant has a United States Department of Veterans Affairs identification card with an expiration date of July 15, 2026.
10. As of August 26, 2024, the hearing date, the claimant did not have any current, valid documentation of work authorization in the United States.
11. As of August 26, 2024, the hearing date, the claimant intended to renew his permanent resident card.

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 except as follows. The Board rejects Finding of Fact # 10, as it is unsupported by the evidence and incorrect as a matter of law. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. As discussed more fully below, we reject the review examiner’s legal conclusion that the claimant has not shown that he was authorized to work in the United States during his benefit year.

The review examiner denied benefits after concluding the claimant had not established that he was legally available for work in the United States. In reaching this conclusion, the review examiner applied the state law provision 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

As a state agency administering the unemployment insurance programs, 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, in order to determine that the claimant was available for work under G.L. c. 151A, § 24(b), the claimant must show that, during his benefit year, he was legally authorized to work by the appropriate U.S. agency, currently the U.S. Citizenship and Immigration Services (USCIS) under the Department of Homeland Security (DHS).

Here, the review examiner’s basis for denying the claimant benefits rests solely on the conclusion that, because the claimant had an expired Permanent Resident Card, the claimant did not have valid immigrant status and work authorization. However, this conclusion is not only factually inaccurate but incorrect as a matter of law.

The DHS immigration regulations state that an expiration date appearing on a Permanent Resident Card “reflects only that the card must be renewed, not that the bearer’s work authorization has expired.” 8 C.F.R. § 274a.12(a)(1).

The claimant is a citizen of Laos and has resided in the United States since 1981. *See Findings of Fact ## 4 and 5.*¹ The findings show that the claimant is the bearer of an expired Permanent Resident Card issued by USCIS. *See Finding of Fact # 7.* Although the card needed to be renewed, we see no evidence in the record that indicates that the claimant’s authority to work in United States had been rescinded. Because the claimant holds a government issued Permanent Resident Card, he has shown that he is legally permitted to reside and work in the United States. Thus, the claimant has shown that he was available to work during his benefit year.

¹ The claimant’s Permanent Resident Card issued by USCIS, marked as Exhibit # 1, provides that the claimant, a citizen of Laos, became a permanent resident of the United States on January 28, 1981. While not explicitly incorporated into the review examiner’s findings, the claimant’s listed country of birth and the original resident date noted on his government issued Permanent Resident Card is part of the unchallenged evidence introduced at the hearing and placed in the record and thus is 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).

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

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending June 15, 2024, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - November 27, 2024



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, 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.

DY/rh