

The claimant did not meet the availability requirements pursuant to G.L. c. 151A, § 24(b), during the week that he was in Europe on vacation for the majority of the week. However, he is eligible for benefits during the week that he was in the U.S. for the majority of the week, while also being capable of and actively seeking work.

**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: 0083 2395 13

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.

The claimant filed a claim for unemployment benefits with the DUA, effective April 21, 2024. On August 7, 2024, the DUA issued a determination denying benefits. 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 21, 2024. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not available for work and, thus, was disqualified 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 was not available for work while on vacation in Portugal and Greece, 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 effective date of [the] claim is April 21, 2024.
2. Prior to filing for benefits, [the] claimant worked full-time as an operations manager. He was laid off on May 3, 2024.
3. The claimant has been looking for jobs in strategy and operations positions in a variety of fields.

4. The claimant has no medical or physical issues preventing him from working full-time.
5. From June 27, 2024, until July 9, 2024, the claimant was on a pre-planned family vacation in Portugal and Greece. He travelled with his wife, his father, his brother and his brother's girlfriend.
6. The claimant expected that if he were offered a position, it would take at least a week before he would start a job.
7. On June 27, 2024, the claimant had a remote job interview and submitted three job applications. On July 1, 2024, the claimant had a remote job interview. On July 2, 2024, the claimant submitted two job applications.
8. On August 5, 2024, the claimant started a new job as a managing director of operations and business at a charter school.
9. On August 7, 2024, the Department of Unemployment Assistance (the "DUA") issued a Notice of Disqualification to the claimant, denying him benefits from June 23, 2024, until July 6, 2024, under Section 24(b) and until he met the requirements of the Law. The claimant appealed the Notice of Disqualification.

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. Upon 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 reject the review examiner's legal conclusion that the claimant is not eligible for benefits during both of the weeks at issue.

The review examiner disqualified the claimant 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

Under this section of law, claimants are expected to be capable of, available for, and actively seeking full-time work.¹

¹ Although not specifically stated in G.L. c. 151A, § 24(b), other provisions of the Massachusetts Unemployment Statute show that unemployment benefits are intended to assist claimants seek and return to *full-time* work. *See, e.g.,* G.L. c. 151A, §§ 29 and 1(r), which provide for the payment of benefits only to those who are unable to secure a full-time weekly schedule of work.

The claimant went on vacation to Portugal and Greece between Thursday, June 27, 2024, and Tuesday, July 9, 2024. Finding of Fact # 5. The review examiner found that, during these two weeks, the claimant was capable of working full-time and performed several work search activities. Findings of Fact ## 4 and 7. However, because the claimant was on vacation, the review examiner concluded that he was not available for work between June 23, 2024, and July 6, 2024, or the two weeks ending June 29, 2024, and July 6, 2024. While we agree that the claimant is not eligible for benefits for the week ending July 6, 2024, we disagree with the review examiner's decision to deny benefits for the week ending June 29, 2024.

Lacking any evidence to the contrary, the review examiner reasonably inferred that the claimant was not making himself available for work while away on vacation, as required by G.L. c. 151A, § 24(b). Indeed, the findings indicate that he did not think he had to, because he estimated that, if offered a job, it would take at least a week before he would have to start working. *See* Finding of Fact # 6. This means that during the week ending June 29, 2024, the claimant was unavailable on three days, Thursday, Friday, and Saturday. Since nothing in the record suggests any reason why he would have been unavailable to work Sunday through Wednesday, he is deemed to have been available for full-time work during the majority of the week. However, during the next week, the week ending July 6, 2024, he was unavailable for work on all seven days, Sunday through Saturday.

We, therefore, conclude as a matter of law that the claimant has met the requirement to be able, available for, and actively seeking work as meant under G.L. c. 151A, § 24(b), during his vacation only when he was available for work the majority of the week.

The review examiner's decision is affirmed in part and reversed in part. We affirm the part of the decision which concluded that the claimant is ineligible for benefits for the week ending July 6, 2024. We reverse the part of the decision that denied benefits during the week ending June 29, 2024, and the claimant is entitled to benefits during that week, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 26, 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.

SVL/rh