

**The claimant placed an unreasonable limitation on her work search, where she would only accept work from the instant employer if the work was located in the city where she lived. Further, her belief that other employees may have also applied for the job opportunities offered by the employer is not a reasonable justification for failing to apply to those positions. Held the claimant was not in total or partial unemployment pursuant to G.L. c. 151A, §§ 29 and 1(r), because she was not conducting an active and realistic work search.**

**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 9195 41**

### Introduction and Procedural History of this Appeal

The employer appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to award 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 October 6, 2024, which was denied in a determination issued on October 25, 2024. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by both parties, the review examiner reversed the agency's initial determination and awarded benefits in a decision rendered on December 4, 2024. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant was in total unemployment and, thus, was not 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 employer'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 his 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 in total unemployment because the employer did not offer the claimant any suitable work even though she was capable of and available for full-time 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 are set forth below in their entirety:

1. On 12/1/21, the claimant began working on call as needed hours for this employer's home care agency as a Home Health Aide.

2. The claimant's rate of pay varied from \$17.00 per hour to \$20.00 per hour depending on the assignment.
3. The employer would post available work assignments, and many employees would then respond to express interest in assignments that were suitable for them in the hope that after responding, they would receive a firm offer of work with a start date.
4. The employer had no information regarding the claimant ever refusing an offer of suitable work.
5. The claimant worked full-time as an Office Manager for another employer, and she also worked on call as needed for several employer's [sic] as a Home Health Aide.
6. The claimant, in October of 2024, had been laid off from her full-time Office Manager job and she was accepting all suitable work from her part-time on call employers.
7. The claimant is a single mother of a nine-year-old daughter, and she must be available to drop off her daughter and pick her up from school. The claimant is available to work from 9:00 a.m. to 2:00 p.m. Monday through Friday. She is also available to work evenings from 9:00 p.m. to 7:00 a.m. on overnight shifts when her parents are available to watch her daughter. The claimant is also available to work on Saturdays and Sundays from Noon to 8:00 p.m.
8. On 10/6/24, the claimant filed a claim for unemployment benefits effective 10/6/24.
9. On 10/25/24, the claimant was sent a Notice of Disqualification beginning 10/6/24 for allegedly requesting a reduction in her working hours. The claimant requested a hearing.
10. The claimant never requested a reduction in her hours, and she has always accepted all offers of suitable work.
11. Since the claimant filed her claim for unemployment benefits, this employer has not made any offer of work to the claimant that had a firm start date for the assignment.
12. On Wednesday 12/4/24, the claimant was included in an e-mail sent to the employer's Home Health Aides that listed 17 clients in several different communities who were seeking services. These assignments all paid \$20.00 per hour to the eventually selected worker.
13. The selection process used by the employer is to gather information from all the employees who respond with their availability and then the employer would

contact the client to learn which available worker the client wants to have as their Home Health Aid. After the client makes a choice based on the availability options presented, then an offer would be made to the worker by the employer based on the client's preferences.

14. The claimant did not become aware of the 12/4/24 information about a potential assignment offer until several days later because the email went to her junk mail and by the time the claimant saw the list of potential assignments that could lead to an offer of work, she understood the potential assignment to already be filled by one of the other aides the informational email had been sent to by this employer.
15. After the 12/4/24 email, the employer stopped sending any other emails to the claimant. The claimant understood that this was due to the employer not having any other suitable potential assignments to inform the claimant about.

### 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. After such review, the Board adopts the review examiner's consolidated findings of fact except as follows. We reject the portion of Consolidated Finding # 15 that found that the employer did not have any other suitable potential assignments for the claimant as unsupported by the evidence of record. In adopting the remaining findings, we deem 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 entitled to benefits.

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.

Thus, 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.

The review examiner awarded the claimant benefits on the grounds that she was capable of and available for work and had accepted all offers of suitable work from the instant employer. While the email sent by the employer contained invitations to apply for available positions and not offers of suitable work, the claimant's decision not to respond to this email raised questions about the adequacy of the claimant's work search. *See Consolidated Findings ## 12 and 14.*

In addition to demonstrating that she is capable of and available for full-time work, an individual seeking unemployment benefits must also show that she has made a reasonable, good faith effort to find new employment. Evancho v. Dir. of the Division of Employment Security, 375 Mass. 280, 282–283 (1978). The Massachusetts Supreme Judicial Court has long held that 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 h[er] continued unemployment is not due to h[er] own lack of diligence.” *Id.* at 282–283. Accordingly, the DUA requires that, during every week in which she certifies for benefits, the claimant makes an active and realistic work search by utilizing a variety of methods and contacting a variety of employers. *See e.g.*, Board of Review Decision 0018 3385 28 (Mar. 30, 2018).

While not incorporated into the consolidated findings, the claimant's uncontested testimony was that she would only consider applying for jobs with the instant employer if the work offered was located in the city where she resided.<sup>1</sup> A claimant may put reasonable limitations on her work search activities. However, she may not impose limitations so severe that it renders her unlikely to secure work. *See, e.g.*, Board of Review Decision 0018 3385 28 (Mar. 30, 2018) (the claimant did not conduct an active and realistic work search because he only contacted his previous employer and his labor union, even though union rules permitted him to accept non-union work.)

In this case, the claimant explained that she would not apply for positions in any other city or town because she needed to take her daughter to and from school. *See Consolidated Finding # 7.* While her daughter's schedule may limit the hours the claimant is available to work during the day on weekdays, we see no reason why this responsibility would render her unable to work shifts in nearby towns and cities. Further, the claimant's need to transport her child to and from school would have no impact on her ability to accept shifts in adjacent towns on nights and weekends. *See Consolidated Finding # 7.* The claimant imposed an unreasonable restriction on her work search activities by refusing to consider any work opportunities outside the city in which she lived.

Additionally, the claimant confirmed that she chose not to apply to any of the seventeen available work opportunities included in the employer's email from December 4, 2024. Consolidated Findings ## 12 and 14. This email, which was admitted into evidence as Remand Exhibit 6, included a list of work opportunities with clients near the claimant's residence, including three clients in the city where the claimant lived.<sup>2</sup> While the claimant assumed other employees had already applied to work with some of these clients, she did nothing to confirm her assumption. The possibility that others may have applied is not a reasonable justification for disregarding

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<sup>1</sup> The claimant's uncontested testimony in this regard, while not explicitly incorporated into the review examiner's findings of fact, is part of the unchallenged evidence introduced at the hearing and placed into the record, and it is thus 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).

<sup>2</sup> Remand Exhibit 6 is also a part of the unchallenged evidence introduced at the hearing and placed into the record.

feasible and available work. Her decision to disregard all future work opportunities offered by the employer, even those that met her self-imposed restrictions, further detracts from a conclusion that the claimant was making a reasonable, good faith effort to find new employment.

We, therefore, conclude as a matter of law that the claimant has not met her burden to show that she was in total or partial unemployment pursuant to G.L. c. 151A, §§ 29(a) and 1(r), because she was not conducting an active and realistic work search.

The review examiner's decision is reversed. The claimant is denied benefits for the week of October 4, 2024, and for subsequent weeks, until such time as she meets the requirements of G.L. c. 151A.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - March 28, 2025**



Paul T. Fitzgerald, Esq.  
Chairman



Charlene A. Stawicki, Esq.  
Member

Member Michael J. Albano 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.

LSW/rh