

**Board of Review
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Issue ID: 334-FHHN-73RH

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 October 6, 2024, which was denied in a determination issued on October 24, 2024. 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 December 7, 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 and, thus, was disqualified under G.L. c. 151A, § 24(b). 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 work authorization. The claimant 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 on appeal is whether the review examiner's decision, which concluded that the claimant did not establish that he was legally available for work under G.L. c. 151A, § 24(b), is supported by substantial and credible evidence and is free from error of law, where the claimant subsequently provided a copy of his Permanent Resident Card.

Findings of Fact

The review examiner's consolidated findings of fact and credibility assessment are set forth below in their entirety:

1. The claimant filed a new claim for unemployment insurance benefits effective October 6, 2024.
2. The claimant was born in Haiti and is a citizen of Haiti.
3. On June 19, 2017, the claimant came to the United States.
4. The claimant has been a resident of the U.S. since June 19, 2017, which is reflected on his Permanent Resident Card.

5. The claimant lost his Permanent Resident Card.
6. On November 9, 2024, the claimant submitted an I90 application to replace a Permanent Resident Card.
7. On November 9, 2024, the claimant was issued a receipt for his I90 application to replace his Permanent Resident Card from the U.S. Citizenship and Immigration Services.
8. The claimant had an appointment scheduled to provide his biometric fingerprints on December 9, 2024. The claimant attended the scheduled appointment and provided his biometrics.
9. The claimant possesses an active Massachusetts driver's license, issued on March 28, 2024, which expires on February 9, 2025. The driver's license is a replacement license because he lost his original license, which was issued in 2020.
10. The claimant possesses a Social Security card, reflecting his name and Social Security number [XXX-XX-XXXX].
11. The claimant possesses a U.S. Visa, issued on May 17, 2017, which expired on September 13, 2017. The visa reflects the claimant entered the U.S. on June 19, 2017.

Credibility Assessment:

The claimant's testimony regarding the incidents and his concerns are deemed to be credible. There is nothing in the record that would suggest the claimant's testimony was not 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 original 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. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant is not entitled to benefits.

The review examiner denied the claimant benefits pursuant to 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 program, 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, a claimant who certifies that he is not a citizen of the United States must verify his identity and show that he has been legally authorized to work during the benefit year of his claim by the appropriate U.S. agency. This is currently the U.S. Citizenship and Immigration Services (USCIS) under the Department of Homeland Security (DHS).

The review examiner denied benefits after the initial hearing because the claimant did not provide the necessary documents to establish that he was legally permitted to work in the United States as of the start of his benefit year, October 6, 2024. We remanded the case for additional evidence after the claimant submitted his Permanent Resident Card with his appeal to the Board. After reviewing the claimant’s documentary evidence during the remand hearing, the review examiner found that the claimant became a permanent resident of the United States on June 19, 2017. Consolidated Finding # 4. The claimant’s status as a permanent resident allows him to live and work permanently in the United States.¹ Thus, the claimant has been legally authorized to work in the United States since the start of his benefit year.

We, therefore, conclude as a matter of law that the claimant is available for work as meant under G.L. c. 151A, § 24(b).

The review examiner’s decision is reversed. The claimant is entitled to receive benefits for the week beginning October 6, 2024, and for subsequent weeks if otherwise eligible.

¹ See U.S. Citizenship and Immigration Services, <https://www.uscis.gov/green-card> (last visited June 11, 2025).

BOSTON, MASSACHUSETTS
DATE OF DECISION - July 15, 2025



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.

SVL/rh

The claimant produced a Permanent Resident Card, which shows that he has permanent authorization to work in the United States and is, therefore, available for work under G.L. c. 151A, § 24(b).