

Part-time shelter worker, who continued to work her weekend shift, should not have been disqualified pursuant to G.L. c. 151A, §§ 29 and 1(r), during the weeks preceding the employer's offer of additional hours, or when she refused other work, because she had no reliable forms of transportation to the employer's other locations. However, she is disqualified from receiving benefits during the weeks she declined suitable work when she had obtained a new car. Her one-hour commute was not unreasonable.

**Board of Review
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Issue ID: 334-FHJ3-H6JV

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, effective February 23, 2025, which was approved in a determination issued by the agency on April 10, 2025. The employer appealed to the DUA Hearings Department. Following a hearing on the merits attended only by the employer, the review examiner reversed the agency's initial determination in a decision rendered on May 23, 2025. The claimant sought review by the Board, which affirmed, and the claimant appealed to the District Court pursuant to G.L. c. 151A, § 42.

On August 19, 2025, the District Court ordered the Board to obtain further evidence. Consistent with this order, we remanded the case to the review examiner to take additional evidence concerning the suitability of the shifts offered to the claimant. Both parties attended the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant was not in partial or total unemployment when she declined the employer's offer to work additional hours beyond her weekend schedule, is supported by substantial and credible evidence and is free from error of law.

After reviewing the entire record, including the recorded testimony and evidence from the original and remand hearings, the review examiner's decision, the claimant's appeal, the District Court's Order, and the consolidated findings of fact, we modify the review examiner's decision.

Findings of Fact

The review examiner's consolidated findings of fact and credibility assessment, which were issued following the District Court remand, are set forth below in their entirety:

1. The claimant filed a claim for unemployment benefits on March 3, 2025, with an effective date of February 23, 2025, and a weekly benefit amount of \$1,032.00.
2. Prior to filing her claim, the claimant worked full time as a homeless coordinator for a housing agency (Company A), working Monday through Friday, 9:00 a.m. to 5:00 p.m. earning \$41.00 per hour.
3. The claimant worked for Company A from September 3, 2024, until February 21, 2025, when Company A terminated her for “not being a good fit.”
4. The claimant contemporaneously worked part time as a shelter worker for the instant employer, a community resource provider from June 17, 2024, until June 30, 2025, earning \$25.12 per hour.
5. The claimant was hired by the instant employer to work a set schedule of 8:00 a.m. to 4:00 p.m. on Saturdays and Sundays at its [City A] location.
6. The claimant lives in [City B], Massachusetts.
7. At times the claimant could pick up hours with the instant employer, she communicated her availability to her immediate supervisor.
8. In January of 2025, the instant employer sent the claimant an e-mail stating it was closing some of its shelters and advised employees working at those shelters to apply for positions at the instant employer’s remaining shelters.
9. The instant employer held a meeting with employees regarding the location closures.
10. The location where the claimant worked was a shelter scheduled to be closed.
11. The claimant applied for positions at the instant employer’s [City C] location and was notified that the positions were filled.
12. At a point between January, 2025, and the end of April, 2025, the claimant did not have transportation after the engine went out in her car.
13. The claimant continued to work for the instant employer without a car, using sick or vacation time to cover any absences she incurred.
14. In the end of April/beginning of May, 2025, the claimant got another car.
15. The claimant stopped working for the instant employer on June 30, 2025, because the shelter location where she worked was closed by the instant employer.

16. The employer closed six shelter locations in total.
17. The claimant's manager with the instant employer was not aware that the claimant had lost her full-time job.
18. On April [16], 2025, the employer sent the claimant an e-mail that read, "Good afternoon, [Claimant], I am emailing because I heard you are looking for additional shifts. This thrills me because we have shifts available! I would like to offer you some. Since you are scheduled for the weekends, you can choose up to 3 of these shifts. [City D]: M-F 8A-4P, M-F 4P-12A. [City E]: M-F 8A-4P, W/F 4P-12A. Please let me know as soon as possible if you would like to pick up any of these shifts. They would become your permanent shifts."
19. The [City D] and [City E] locations were approximately an hour to over an hour away from the claimant.
20. On April 26, 2025, the claimant responded by e-mail, "Good morning [Name]. There must have been a misunderstanding. I just recall applying for the [City C] Shelter for when my current shelter closes. I had not requested more shifts at this time. But I will reach out for sure if need be. Thank you."
21. The instant employer's pay periods run for two weeks from Sunday to the second Saturday.
22. The claimant knows the difference between gross and net pay.
23. The claimant does not have access to the days or hours she worked for the instant employer.
24. For the pay period of March 2, 2025, through March 15, 2025, the claimant worked for the instant employer 30.25 hours, used 5.75 hours of sick time and had gross earnings of \$904.32 for the pay period.
25. For the pay period of March 16, 2025, through March 29, 2025, the claimant worked for the instant employer 8 hours, used 24 hours of sick time and had gross earnings of \$803.84 for the pay period.
26. For the pay period of March 30, 2025, through April 12, 2025, the claimant worked for the instant employer 16 hours, used 5.37 hours of sick time and had gross earnings of \$536.81 for the pay period.
27. For the pay period of April 13, 2025, through April 26, 2025, the claimant worked for the instant employer 23 hours, had 3.2 hours holiday pay and had gross earnings of \$658.14 for the pay period.

28. For the pay period of April 27, 2025, through May 10, 2025, the claimant worked for the instant employer 24 hours, used 16 hours vacation pay and had gross earnings of \$1,004.80 for the pay period.

Credibility Assessment:

Both the claimant and the employer participated in the remand hearing. During the hearing, the claimant could not confirm or deny the employer's witnesses' testimony during the first hearing as to hours she worked during specific weeks, as she cannot access the employer's payroll system and could not recall how many hours she worked during weeks in the applicable period. As such, the employer's testimony as to the number of hours the claimant worked each week and the amount of her gross pay for each week is determined to be 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 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. While we believe that the review examiner's consolidated findings of fact support the conclusion that the claimant was not in partial unemployment for a portion of the period on appeal, we believe that the review examiner erred in denying the claimant benefits during the weeks in which the employer did not offer the claimant additional work and the claimant had no alternative means of transportation.

To be eligible for unemployment benefits, the claimant must show that he 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.

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.

In this case, we have confined our analysis to the period during which the claimant worked for the instant employer while claiming benefits beginning March 2, 2025, through June 30, 2025. *See Consolidated Findings ## 1, 4, and 15.*

Prior to filing her claim for benefits, the claimant worked full-time for a housing agency while working part-time for the instant employer during the period beginning September 3, 2024, until February 21, 2025. *See Consolidated Findings ## 2, 3, and 4.* Upon separating from her primary employer, the claimant continued to work part-time for the instant employer during the period between the effective date of her claim and her separation from the instant employer. *See Consolidated Findings ## 1 and 4.* Absent any indication that the claimant had any limitations on her capability or availability for full-time work during this period, and we see none, she was in partial unemployment during any week she earned gross wages less than \$1,376.00, which is the sum of her weekly benefit amount (\$1,032.00) plus her earnings disregard (\$344.00). In any week in which she earned wages exceeding that total amount, she was not eligible for benefits.

In her initial decision, the review examiner denied the claimant benefits beginning March 9, 2025, because the employer offered the claimant additional hours in an email dated April 16, 2025, which the claimant later declined. *See Consolidated Findings ## 18 and 20.* However, we disagree with the portion of the review examiner's decision that the claimant was not in partial unemployment during certain weeks in the relevant period.

Here, the employer has not presented any evidence that indicates it offered the claimant additional hours for which she refused prior to the employer's April 16, 2025, email. *See Consolidated Finding # 18.* Consolidated Findings 24, 25, and 26, show that the claimant had worked less than full-time hours and earned less than her weekly benefit amount.¹ Absent any evidence that indicates the claimant refused to work her set schedule on Saturdays and Sundays, of which we also see none, the claimant was in partial unemployment during the period beginning March 2, 2025, through April 15, 2025.

On April 16, 2025, the employer became aware that the claimant was looking for additional work and offered her available shifts in its [City D] and [City E] locations and that the claimant declined. *See Consolidated Findings ## 18 and 20.* The question then becomes whether the hours turned down by the claimant were unsuitable. Just as a claimant may still be in total unemployment if unsuitable work is offered and refused, a claimant with ongoing, part-time work may still be in partial unemployment if she rejects unsuitable work. This is so, in part, because "an individual need only be available for suitable employment which [s]he has no good cause to refuse." Conlon v. Dir. of Division of Employment Security, 382 Mass. 19, 21 n.1 (1980) (discussing the

¹ The review examiner's findings are based upon a biweekly pay period. *See Consolidated Finding # 21.* Neither the claimant nor the employer was able to provide specific evidence as to the number of hours the claimant worked each week at issue. *See Consolidated Findings ## 23 and 24–28.* Without more accurate information, we must attribute these wages based upon the best information available. Because we know from the findings that the total number of hours worked during a two-week period do not reflect full-time employment and that the claimant's gross biweekly earnings, even if we were to assume that it was earned in a single week as opposed to a biweekly period, do not exceed her weekly benefit amount, the claimant was in partial unemployment. We also note that the DUA's electronic record keeping system shows that the agency is separately reviewing the earnings issue (under Issue ID # 352-MMPV-89J5) to address any discrepancies in the reporting of her earned wages each week while still employed with the instant employer.

relationship between G.L. c. 151A, §§ 24(b) and 25(c), with regard to when a person can refuse work). “Suitability is not a matter of rigid fixation. It depends upon circumstances and may change with changing circumstances.” Pacific Mills v. Dir. of Division of Employment Security, 322 Mass. 345, 350 (1948). The suitability of a job depends on many factors, McDonald v. Dir. of Division of Employment Security, 396 Mass. 468 (1986), which can include access to reasonable transportation.

We note that, when the claimant was hired, she was assigned to work at the employer’s [City A] location and continued to work in that location including occasionally picking up additional hours at the employer’s [City C] location until her separation. *See* Consolidated Findings ## 5, 7, 11, and 15.² Although the claimant was offered suitable work in the [City A] location, she declined the additional hours of work at the employer’s [City D] and [City E] locations because she did not have a car. *See* Consolidated Findings ## 12, 13, and 18. Based on the claimant’s uncontested testimony, she was able to find alternative transportation to the employer’s [City A] location, which was a short distance from her home, but that she was unable to find any reliable forms of transportation to the employer’s [City D] and [City E] locations, which were over an hour away. *See* Consolidated Findings ## 13 and 19.

When a claimant lacks adequate transportation to an employer’s work locations, she has established good cause for refusing suitable work. *See* Board of Review 0013 0839 05 (Oct. 14, 2014) (claimant accepted all suitable work available, where she accepted all evening hours offered when she could obtain access to an automobile). Here, the consolidated findings show that the claimant was accepting hours only when she had access to adequate transportation. *See* Consolidated Findings ## 5, 7, 12, 13, 27, and 28. We believe that the record supports the conclusion that the claimant has accepted all suitable work available to her. Because her gross earnings during the period that she lacked adequate transportation were less than her weekly benefit amount, the claimant was in partial unemployment and, thus, eligible for benefits during the period beginning April 16, 2025, through May 3, 2025. *See* Consolidated Findings ## 27 and 28.

However, the claimant has not established good cause for refusing suitable work after May 3, 2025. The record reflects that the claimant obtained a new car sometime at the end of April beginning of May 2025. *See* Consolidated Finding # 14. With her transportation issues resolved, the claimant further asserts that the hour-long commute to the employer’s other locations ([City D] and [City E]) established good cause for refusing suitable work. *See* Consolidated Findings ## 5 and 19. We disagree. We do not view a one-hour commute to work to be inherently unreasonable. *See* Board of Review 0010 6444 71 (July 31, 2014) (claimant’s one hour commute each way by car, on a daily basis, did not establish good cause reasons to reject suitable work). Because suitable work was available to the claimant at the employer’s [City D] and [City E] locations beginning the week of May 4, 2025, she was not in total or partial unemployment within the meaning of G.L. c. 151A, §§ 29 and 1(r).

² The claimant’s testimony regarding the locations she worked, including her testimony regarding her inability to find reliable transportation to the employer’s other work locations referenced below, while not explicitly incorporated into the review examiner’s findings, is part of the unchallenged evidence introduced at the hearing and placed in the record and, 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).

Upon becoming separated from employment on June 30, 2025, her eligibility for benefits after that date is governed by a separate section of law. *See* Consolidated Findings ## 8-11, 15, and 16. However, that issue is not currently before the Board.

We, therefore, conclude as a matter of law that the claimant was in partial unemployment during the period between March 2, 2025, and May 3, 2025, pursuant to G.L. c. 151A, §§ 29(b) and 1(r)(1). We further conclude that the claimant was not in total or partial unemployment during the period between May 4, 2025, and June 28, 2025.

The review examiner's decision is affirmed in part and reversed in part. The claimant is entitled to partial benefits for the weeks of March 2, 2025, through May 3, 2025, if otherwise eligible. The claimant is denied benefits for the weeks of May 4, 2025, through June 28, 2025.

BOSTON, MASSACHUSETTS
DATE OF DECISION - November 20, 2025



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
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**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