

**The claimant was not in total or partial unemployment during the first three weeks she filed her claim, as she was unavailable for work while on vacation. Thereafter, there is no indication the claimant had any limitations on her availability and the review examiner reasonably rejected the employer’s testimony that the claimant had declined suitable work. Held the claimant was in partial unemployment under G.L c. 151A, §§ 29 and 1(r), and eligible for benefits, upon her return.**

**Board of Review  
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**Issue ID: 352-MP2M-735F**

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 we affirm in part and reverse in part.

The claimant filed a claim for unemployment benefits with the DUA, effective July 6, 2025, which was approved in a determination issued on July 31, 2025. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the employer, the review examiner affirmed the agency’s initial determination and awarded benefits in a decision rendered on October 23, 2025. We accepted the employer’s application for review.

Benefits were awarded after the review examiner determined that the claimant was in partial unemployment beginning the week of July 6, 2025, 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 subsidiary findings of fact pertaining to the work the employer offered the claimant following the effective date of her claim. Thereafter, the review examiner issued her 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 partial unemployment because she accepted all work offered by the employer and did not work full-time hours during any of the weeks at issue, 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 and credibility assessment are set forth below in their entirety:

1. The claimant worked as a part-time bagger for the employer, a grocery store, from June 12, 2024, until the present time.
2. The claimant works a variable schedule of up to 8 hours per week. The claimant is paid an hourly rate of \$15 per hour. The claimant does not receive benefits in her position.
3. The employer was aware that the claimant worked another job, which was her primary employer. The employer would schedule the claimant around the hours of her other job.
4. The employer would post a weekly schedule by noon on Saturday. The schedule was for a one-week period from Sunday through Saturday.
5. The claimant would normally work the 4 p.m. to 8 p.m. shift. The claimant worked up to two days per week for a total of 8 hours.
6. The employees could request additional hours by placing the request in the employer scheduling book. The employees would be provided with the additional hours if they were available.
7. The claimant did not work the weeks ending June 7, 2025, June 21, 2025, June 28, 2025, and July 5, 2025. (It is unknown as to why the claimant was not scheduled to work during those weeks.) The claimant worked 4.25 hours for the employer during the week ending June 14, 2025.
8. The claimant filed her claim for unemployment benefits with an effective date of July 6, 2025, when she was no longer working for her primary employer.
9. The employer was aware that the claimant was available for additional hours, as the claimant informed the Front-End Manager that she was no longer working for her other employer.
10. The claimant requested to take three weeks off from work with the instant employer from July 6, 2025, through July 26, 2025.
11. After July 26th, during the week of July 27, 2025, to August 2, 2025, the claimant was only scheduled to work one day. The claimant returned to work for the employer on Friday August 1, 2025, working her scheduled 4.5 hours.
12. The claimant was working all of her scheduled hours with the instant employer.
13. On July 31, 2025, a Determination was issued under Section 29(a), 29(b) and 1(r) of the Law, indicating "The claimant is eligible for benefits from the week ending July 12, 2025, to July 14, 2026." "(Claimant name) worked a second job during the base period, and they are now accepting all available work. Because

of this, the claimant is eligible for partial benefits for any week they worked less than full-time hours.” The employer filed an appeal to that determination.

#### Credibility Assessment:

The employer witness testified that the claimant did not request additional hours any time after July 6, 2025. The Review Examiner does not find the employer testimony to be credible as he also testified that he believed the claimant informed the Front-End Manager that she had been separated from her primary employer, which would support that the claimant made the employer aware that she was available for additional hours.

The employer witness also testified that the employer had up to 15 to 20 hours of work available to the claimant after July 6, 2025. The Review Examiner does not find the employer testimony to be credible, as the employer witness testified to the claimant’s availability of 8 hours per week prior to the July 6, 2025 date, however, during the month of June 2025 up until her request for vacation time beginning July 6, 2025, she was actually working zero hours in many weeks and when she did work in other week(s) she only worked 4.25 hours. When asked why the claimant was not working her available hours during those weeks, the employer witness had no knowledge. The witness was unable to provide specific information as to whether she was not scheduled by the employer, had requested time off, or had called out of work. Given that the evidence presented does not show that her regular hours (4 to 8 hours) were consistently available to her, it is not supported that additional hours (15 to 20 hours) would have been available after July 6, 2025.

#### 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. However, as discussed more fully below, we reject the review examiner’s legal conclusion that the claimant was entitled to benefits beginning the week of July 6, 2025.

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.

Pursuant to these provisions, 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, the claimant requested not to work during the three weeks between July 6, 2025, and July 26, 2026. Consolidated Finding # 10. Although not explicitly incorporated in the findings of fact, the employer explained that the claimant requested this time off for vacation.<sup>1</sup> As the claimant rendered herself unavailable for work during this three-week period, she was not in total or partial unemployment within the meaning of G.L. c. 151A, § 1(r).

Beginning the week of July 27, 2025, however, there was no evidence indicating that the claimant imposed any other limitations on her availability for work, as she no longer had to accommodate the hours she worked for her primary employer. *See Consolidated Findings ## 3 and 8.* Because there was also no indication that the claimant was incapable of full-time work, the remaining question in assessing her unemployment status is whether she declined offers of suitable work following her return from vacation.

Following remand, the review examiner rejected as not credible the employer’s witness’s testimony that the claimant was not accepting all available suitable work. Such assessments are within the scope of the fact finder’s role, and, unless they are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. *See School Committee of Brockton v. Massachusetts Commission Against Discrimination*, 423 Mass. 7, 15 (1996). Inasmuch as the employer’s witness conceded that he could not explain why the claimant had not previously been scheduled up to the full eight hours each week if additional work was in fact available, we have accepted the review examiner’s credibility assessment as being supported by a reasonable view of the evidence. *See Consolidated Findings ## 2 and 7.*

The claimant resumed working her usual part-time schedule beginning the week of July 27, 2025. *See Consolidated Findings ## 2, 5, and 11.* As the claimant accepted all work offered to her, and since she was not working a full-time schedule, the claimant was in partial unemployment within the meaning of G.L. c. 151A, § 1(r)(1), beginning the week of July 27, 2025. *See Consolidated Finding # 12.*

We, therefore, conclude as a matter of law that the claimant was not in total or partial unemployment within the meaning of G.L. c. 151A, §§ 29 and 1(r), during the three-week period

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<sup>1</sup> The employer’s witness’s testimony in this regard is part of the unchallenged evidence introduced at the hearing and placed in 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).

between July 6, 2025, and July 26, 2025. We further conclude that the claimant was in partial unemployment within the meaning of G.L. c. 151A, §§ 29 and 1(r), as of July 27, 2025.

Finally, we note that, inasmuch as the present employer was the claimant's subsidiary employer during the base period, its account will not be charged as long as it continues to employ the claimant during the weeks of her claim to the same extent that it previously employed her. *See* 430 CMR 5.05(1).

The review examiner's decision is affirmed in part and reversed in part. The claimant is denied benefits for the week three-week period between July 6, 2025, and July 26, 2025. She is entitled to receive benefits for the week of July 27, 2025, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - February 9, 2026**



Charlene A. Stawicki, Esq.  
Member



Michael J. Albano  
Member

**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