

The claimant was not in unemployment pursuant to G.L. c. 151A, §§ 29 and 1(r), for the weeks when he declined offers of additional suitable work or rendered himself unavailable for work.

**Board of Review
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Issue ID: 352-NL3N-H72F

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 August 18, 2024, which was initially approved. Subsequently, in a determination issued on September 10, 2025, the DUA determined the claimant was eligible for partial benefits beginning the week ending August 2, 2025, because he worked less than a full-time schedule for the instant employer. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits attended by both parties, the review examiner affirmed the agency's initial determination and awarded partial benefits as of the week ending August 2, 2025, in a decision rendered on November 10, 2025. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant was in partial 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 afforded the parties an opportunity to submit written reasons for agreeing or disagreeing with the decision. Only the employer responded. 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 even though he did not accept all work offered by the instant employer, the claimant's subsidiary employer, 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 claimant filed a claim for unemployment insurance benefits effective August 18, 2024, with a benefit year end of August 16, 2025. The Department of Unemployment Assistance (DUA) calculated the claimant's weekly benefit amount as \$1,033.00, with an earnings disregard of \$344.33.

2. The claimant filed a claim for unemployment insurance benefits effective August 17, 2025, with a benefit year end of August 15, 2026. The Department of Unemployment Assistance (DUA) calculated the claimant's weekly benefit amount as \$450.00, with an earnings disregard of \$150.00.
3. On approximately March 17, 2025, the claimant began full-time employment as a software specialist with a software sales company (company A), until he separated from his employment on approximately July 25, 2025, due to not meeting performance metrics.
4. On approximately May 13, 2025, the claimant began part-time employment as a security officer with the instant employer, a security company working a variable schedule of approximately two (2) to three (3) overnight shifts a week, with each shift being approximately three (3) to four (4) hours long. The claimant is still employed.
5. The claimant worked more hours and earned more wages with company A than the instant employer.
6. Company A is the claimant's primary employer.
7. The instant employer is the claimant's subsidiary employer.
8. In approximately [sic] middle of July 2025, the claimant received an offer of employment with an automobile sales company (company B).
9. During the week beginning July 27, 2025, through August 2, 2025, while the instant employer had additional hours of employment available, the claimant worked in his regular part-time employment as he worked 14 hours earning \$224.00 in gross wages.
10. During the week beginning August 3, 2025, through August 9, 2025, while the instant employer had additional hours of employment available, the claimant worked in his regular part-time employment as he worked 10 hours earning \$160.00 in gross wages.
11. On August 9, 2025, the claimant informed the instant employer's vice-president (employee A) that he was providing his two (2) weeks' notice, when employee A and the claimant agreed that the claimant would continue working for the instant employer, but would transition to per-diem employment, whereby the claimant would inform the instant employer when he was available to work.
12. On approximately August 11, 2025, company B informed the claimant that it was rescinding the offer of employment.

13. During the week beginning August 10, 2025, through August 16, 2025, while the instant employer had additional hours of employment available, the claimant worked in his regular per-diem employment as he worked 17 hours earning \$272.00 in gross wages.
14. During the week beginning August 17, 2025, through August 23, 2025, the claimant worked in his regular per diem employment for the instant employer as he worked 10.52 hours earning \$175.00 in gross wages.
15. On August 30, 2025, the claimant informed employee A that he would be out of work until he updated the instant employer with his availability.
16. During the week beginning August 24, 2025, through the week ending September 6, 2025, the claimant did not work for the instant employer as he did not provide the instant employer with his availability to work during the week because he was concentrating on finding employment in the software sales field even though the instant employer had work available for the claimant.
17. On September 10, 2025, the instant employer's assistant vice-president of human relations (employee B) informed the claimant of an open shift that was available, whereby the claimant declined the offer.
18. During the week beginning September 7, 2025, through the week ending October 4, 2025, the claimant did not work for the instant employer as he did not provide the instant employer with his availability to work during the week because he was concentrating on finding employment in the software sales field even though the instant employer had work available for the claimant.
19. During the week beginning October 5, 2025, through October 11, 2025, the claimant did not work for the instant employer as the instant employer did not have work available for the claimant following the claimant's text message to the field supervisor (employee C) indicating he was available for work.
20. During the week beginning October 12, 2025, through October 18, 2025, the claimant worked in his regular per diem employment for the instant employer as he worked 4 hours earning \$64.00 in gross wages, while also informing the employer that he would be available for day-time work, but it would have to be pushed back a week.

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 entitled to benefits as of the week ending August 2, 2025.

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.

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.

The review examiner concluded that, because the instant employer was the claimant's subsidiary employer, the claimant was entitled to benefits even though he had declined offers for work from the instant employer. *See* Findings of Fact ## 6 and 7. This was an error. A claimant may not turn down suitable work offered by any employer, whether primary, subsidiary, or otherwise.

In this case, the parties did not dispute that the claimant declined offers of work from the instant employer during the three-week period between July 27, 2025, and August 16, 2025. Findings of Fact ## 9, 10, and 13. Since the employer offered the claimant additional hours working in the same security officer position, we presume that the hours offered to the claimant constituted suitable work. Therefore, the claimant was not in unemployment within the meaning of the above provisions during each of the three weeks that he decided not to accept the available additional hours of suitable work.

During the week ending August 23, 2025, the claimant worked less than full-time hours for the instant employer and earned gross wages of \$175.00, an amount exceeding his earnings disregard by \$25.00. Findings of Fact ## 2 and 14. As there was no evidence in the record suggesting that the claimant had declined any additional offers of work from the instant employer during that week, and, because the claimant's gross earnings only exceeded his earnings disregard by \$25.00, he was in partial unemployment during the week ending August 23, 2025.

As of the week ending August 30, 2025, and through the week ending October 4, 2025, the claimant did not provide the employer with his availability. Instead, he chose to focus solely on his efforts to secure new, full-time employment. Findings of Fact ## 16 and 18. In so doing,

however, the claimant rendered himself unavailable for work. Therefore, the claimant also failed to meet the statutory definition of unemployment during this five-week period.

As of the week ending October 11, 2025, the claimant notified the employer that he was now available for work. Finding of Fact # 19. Because the employer was unable to offer him any work during that week, the claimant was in total unemployment during the week ending October 11, 2025.

The claimant subsequently delayed his availability for work with the employer until after the week ending October 18, 2025. Finding of Fact # 20. In so doing, the claimant once again rendered himself unavailable for work, and was not in total or partial unemployment during the week ending October 18, 2025.

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), from the week ending August 2, 2025, through the week ending August 16, 2025, from the week ending September 6, 2025, through the week ending October 4, 2025, or during the week ending October 18, 2025. We further conclude that the claimant was in partial unemployment within the meaning of G.L. c. 151A, §§ 29 and 1(r), during the week ending August 23, 2025, and was in total unemployment during the week ending October 11, 2025.

The review examiner's decision is affirmed in part and reversed in part. The claimant is denied benefits from the week ending August 2, 2025, through the week ending August 16, 2025. He is entitled to partial benefits during the week ending August 23, 2025, if otherwise eligible. The claimant is denied benefits from the week ending September 6, 2025, through the week ending October 4, 2025, and for the week ending October 18, 2025. He is entitled to benefits for the week ending October 11, 2025, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - February 27, 2026



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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.

LSW/rh