

Where parties waived a hearing pursuant to 801 CMR 1.02(10)(b), and the employer declined to present any evidence, Board held the employer failed to sustain its burden to demonstrate that the claimant's on-going strike caused a substantial curtailment of its operations. The claimants remained eligible for benefits under G.L. c. 151A, § 25(b).

Board of Review  
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Docket ## M-1001 and M-1003

### Introduction and Procedural History of this Appeal

Through their union representative, the claimants appeal determinations by the Department of Unemployment Assistance (DUA) to deny unemployment benefits as of the week beginning August 1, 2021. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

In determinations issued on April 30, 2021, benefits were originally awarded after the DUA concluded that the employer had failed to prove that the claimants' participation in a labor dispute during the period beginning March 7, 2021, resulted in a stoppage of work pursuant to G.L. c. 151A, § 25(b). On August 13, 2021, the employer requested that the DUA reconsider its award of benefits, alleging a material change in circumstances since the initial April 30, 2021, determinations. Following an investigation, the DUA redetermined the claimants' eligibility for benefits and issued Notices of Redetermination and Disqualification on October 6, 2021 (redeterminations). The DUA's redeterminations concluded that the claimants' on-going participation in a strike resulted in a stoppage of work pursuant to G.L. c. 151A, § 25(b), as of the week beginning August 1, 2021. The claimants appealed, and the DUA Director referred their appeal directly to the Board of Review as permitted under G.L. c. 151A, § 39(d).

When the DUA Director refers a request for a hearing of an eligibility determination under G.L. c. 151A, § 25(b), directly to the Board, the Board must conduct a hearing *de novo*. See Board of Review Decision M-0336 (Aug. 18, 2017). Pursuant to 801 CMR 1.02(10)(b), the parties have elected to waive the hearing and have submitted position statements to the Board.

### Ruling of the Board

Although the express language of G.L. c. 151A § 25(b), is silent, the Board has consistently held that the employer bears the burden to prove a stoppage of work. See Board of Review Decision M-62772 – M-69116, (Apr. 24, 2013), *aff'd.* by Verizon New England, Inc. v. Massachusetts Executive Office of Labor and Workforce Development, No. 14-P-129, et al., 2015 WL 3476959 (Mass. App. Ct. Jun. 3, 2015), *summary decision pursuant to rule 1:28*. Accordingly, the employer must show by substantial and credible evidence that the claimants' strike caused a substantial curtailment of work normally performed by the striking employees (bargaining unit work). If it cannot show that bargaining unit work was substantially curtailed, it must demonstrate that the strike measurably and substantially disrupted the work of the non-bargaining unit work force. See Board of Review Decision M-0336 et al. (Aug. 18, 2017).

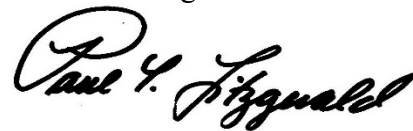
In its position statement, the employer has notified the Board that it declines to submit evidence and does not oppose the claimants' appeal. The position statement submitted by the claimants' representative contains a sworn affidavit, stating that the claimants were engaged in a strike between March 8, 2021, and January 3, 2022, and that workers had reported no change in the employer's functional operations, specifically with respect to its psychiatric services, during the period at issue.

There is no other evidence in the record from which the Board can assess whether the claimants' labor dispute caused a substantial curtailment of operations as of the week beginning August 1, 2021. Without such evidence, there is no basis to conclude that the claimants' on-going unemployment was due to a stoppage of work.

We, therefore, conclude as a matter of law that the employer has failed to sustain its burden to show that claimants' unemployment as was due to a stoppage of work within the meaning of G.L. c. 151A, § 25(b), as of August 1, 2021, and continuing through January 8, 2022.

The DUA's determinations are reversed. The claimants are entitled to receive benefits from the week beginning August 1, 2021, through January 8, 2022, if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - February 28, 2022**



Paul T. Fitzgerald, Esq.  
Chairman



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