



THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT  
BOARD OF REVIEW

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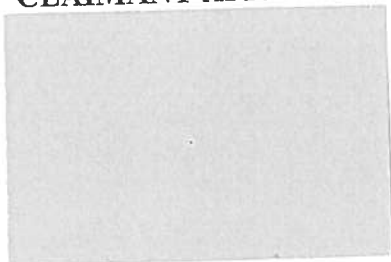
STEPHEN M. LINSKY, ESQ.  
MEMBER

**BOARD OF REVIEW  
DECISION**

In the matter of:

Appeal number: **BR-114970**

**CLAIMANT APPELLANT:**



Introduction and Procedural History of this Appeal

The claimant appeals a decision by Cheryl Lynch, a review examiner of the Division of Unemployment Assistance (DUA), to deny unemployment benefits for a period of time following the claimant's separation from employment. We review, pursuant to our authority under G.L. c. 151A, § 41; we affirm in part and reverse in part.

The claimant separated from employment in April, 2009, filed a claim for unemployment benefits with the DUA, and was initially approved. On December 22, 2009, the agency redetermined the claimant's eligibility, finding her to be ineligible, but subsequently modifying that redetermination to end her period of disqualification as of February 27, 2010. She appealed the redetermination to the DUA hearings department. Following a hearing on the merits, the review examiner reversed the denial of benefits for the sixteen weeks ending June 13, 2009 through July 18, 2009, and December 26, 2009 through February 27, 2010, but affirmed the agency's denial of benefits for twenty-two weeks ending July 26, 2009 through December 19, 2009, in a decision rendered on July 2, 2010. We accepted the claimant's application for review.

Benefits were denied for those twenty-two weeks because the review examiner determined that the claimant was disqualified, under G.L. c. 151A, § 24(b), as she had not engaged in an active work search during those weeks. Our decision is based upon our review of the entire record including the recorded testimony and evidence from the DUA hearing, the review examiner's decision, and the claimant's appeal.

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The issue on appeal is whether the claimant, who was homeless and without a telephone, provided sufficient evidence that she was actively searching for work.

### Findings of Fact

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

1. The claimant filed a claim for benefits on June 10, 2009. The effective date of the claim for benefits is June 7, 2009.
2. The claimant has an eighteen-year-old son and a twenty-two-year-old son.
3. The claimant last was employed by a defense company beginning in August 2008 and she performed services until April 17, 2009. The claimant resigned from her position as a systems analyst due to her medical condition exacerbated by job stress.
4. The claimant suffered stress and emotional distress in her most recent employment, causing complications for her medical conditions, primarily her gastroenteritis. The claimant work full time until she resigned from her employment in April 2009.
5. Prior to working for her most recent employer, the claimant had worked for one year as a full time systems engineer for a medical technology company.
6. After a few weeks of recuperation following her resignation from the defense company, the claimant was ready to return to the workforce.
7. The claimant was able to find some "contracting" work in July 2009. The claimant performed services for a local company on a "contract" basis during two weeks in July 2009.
8. The claimant was without regular phone service and regular internet access from mid-July 2009 through December 2009.
9. Due to her lack of income, the claimant became homeless in approximately August 2009. The claimant moved around between the homes of her parents and her friends during the following months.
10. At sometime in approximately the week ending December 12, 2009, the claimant and her younger son drove cross-country to California, and the claimant returned to Massachusetts on about December 17, 2009. Initially, the claimant did not have money to return home, but her elder son was able to buy her an airline ticket back to Massachusetts.

11. On December 18, 2009, the claimant consulted with an attorney at a charitable legal services agency.
12. On December 18, 2009, with the assistance of her attorney, the claimant submitted a written statement to the Division of Unemployment Assistance (“Division”) explaining her circumstances and asserting she was able, available and actively seeking work. The statement indicated in part, “I have not been able to call to certify because I cannot afford to get more minutes on my cell phone and have had limited internet access because I have been homeless for part of this period, but I have been visiting employers in person and actively seeking work.”
13. The period when the claimant was unable to certify for benefits was the week ending July 18, 2009 through the week ending December 5, 2009.
14. The claimant was looking for work using multiple work-search methods, including recruiters, temporary staffing agencies, direct or in-person application, networking, and computer and internet search. It is unknown how often the claimant used these search methods each week, if at all, during the twenty-two weeks ending July 25, 2009 through December 19, 2009. The claimant was using these search methods regularly prior to her loss of phones [sic] service and after she sought assistance in mid-December 2009.
15. On December 22, 2009, the Division issued a Notice to Claimant of Disqualification disqualifying the claimant from receiving benefits under section 24(b) of the law for the week ending June 13, 2009 and thereafter.
16. On April 16, 2009, the Division modified the determination made in the 12/22/09 Notice to Claimant of Disqualification based on receipt of a 2/25/10 Physician’s Statement of Capability from the claimant’s doctor. The Division modified the disqualification such that it ended as of February 27, 2010.

#### Ruling of the Board

The Board adopts the review examiner’s findings of fact. In so doing, we deem them to be supported by substantial and credible evidence. However, we reach our own conclusions of law, as are discussed below.

G.L. c. 151A, §24(b), 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. . .

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We agree with the review examiner's conclusion that there are sufficient facts to show that the claimant was capable of performing work during the entire thirty-eight weeks ending June 13, 2009 through February 27, 2010. However, with the exception of one week, we disagree with the review examiner's conclusion that for much of that period, the claimant failed to show that she had been actively seeking work.

G.L. c. 151A, § 24(b), does not require a claimant to use any one method of looking for work. The claimant was homeless and without the use of her own telephone. In light of these obstacles, we conclude that the use of recruiters, temporary staffing agencies, in-person applications, networking, and internet searches were reasonable methods for looking for work in the unique circumstances presented by this case, and that they constitute an active work search.

For the week ending December 19, 2009, however, the claimant was in California. Without a telephone, the claimant could not have been actively in touch with her recruiters or temporary staffing agencies, engaging in networking, or directly applying for jobs.

We, therefore, conclude as a matter of law that the claimant has satisfied the requirement to be capable of, available, and actively seeking work, within the meaning of G.L. c. 151A, § 24(b), for all but one week during the relevant period.

The portion of the review examiner's decision that awarded benefits for the sixteen weeks ending June 13, 2009 through July 18, 2009, and December 26, 2009 through February 27, 2010, is affirmed. We reverse that portion of the review examiner's decision that denied benefits to the claimant for twenty-one weeks ending July 25, 2009 through December 12, 2009. The claimant is not entitled to benefits for the week ending December 19, 2009.



John A. King, Esq.  
Chairman

**BOSTON, MASSACHUSETTS**  
**DATE OF MAILING - February 9, 2011**



Sandor J. Zapolin  
Member

Member Stephen M. Linsky, Esq. declines to sign the majority opinion.

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS DISTRICT COURT**  
**(See Section 42, Chapter 151A, General Laws Enclosed)**

**LAST DAY TO FILE AN APPEAL IN COURT - March 11, 2011**