

**Board of Review
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Issue ID: 0002 2267 99

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Elizabeth Cloutier, 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 reverse.

The claimant resigned from her position with the employer on September 28, 2012. She filed a claim for unemployment benefits with the DUA, which was initially denied in a determination issued on December 4, 2013. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the claimant, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on February 28, 2013. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not capable of, able, available for, and actively seeking full-time work, and thus, was disqualified under G.L. c. 151A, § 24(b). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we afforded the parties an opportunity to submit written reasons for agreeing or disagreeing with the decision. Only the claimant responded. Our decision is based upon our review of the entire record.

The issue on appeal is whether the claimant established that she had good cause for limiting her availability during the benefit year to part-time employment, when, after having a baby and being unable to afford daycare, she separated from her employment and sought part-time employment during the hours when she could share child care and vehicle use with her husband.

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 10-16-12.
2. The claimant last worked in a full time position as a receptionist.
3. The claimant had a baby after separating from her employer for which she is providing care.

4. The claimant investigated cost of day care and found the local options to be too expensive.
5. The claimant's husband works full time and the claimant is looking for part time work between 4 and 9 p.m. which does not conflict with his work hours in order to share vehicle use and child care responsibilities.
6. The claimant is looking for part time work in a retail or counter service position.
7. The claimant is only available for part time work at this time.

Ruling of the Board

The Board adopts the review examiner's consolidated 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 [her] usual occupation or any other occupation for which [she] is reasonably fitted . . .

Also relevant in the case is DUA Regulation 430 CMR 4.45 (1)(b): Conditions for Limiting Availability, which provides in pertinent part as follows:

An individual otherwise eligible for benefits may limit his/her availability for work during the benefit year to part-time employment provided, that the individual establishes to the satisfaction of the commissioner that the reasons for leaving his or her employment were for such an urgent, compelling, and necessitous nature as to make his or her separation involuntary; and . . . that the same or escalated urgent, compelling, and necessitous reasons require the individual to limit availability for work during the benefit year to part-time employment; and such limitation does not effectively remove the individual from the workforce, . . .

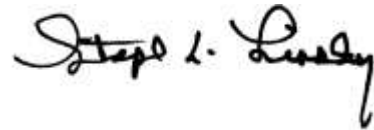
Under G.L. c. 151A, § 24(b), it is the claimant's burden to show that she was capable of, available for, and actively seeking work in her usual occupation or any other occupation for which she is reasonably fitted. We take notice of an earlier DUA hearings department decision regarding this claimant's eligibility, under G.L. c. 151A, § 25(e)(1), for unemployment benefits. In Docket Number 627299, dated February 28, 2013, the DUA review examiner determined that the claimant was eligible for benefits, under G. L. c. 151A, § 25(e)(1), because she had left work involuntarily for urgent, compelling, and necessitous reasons when her childcare fell through before she was to return to work after maternity leave. We denied an appeal of that decision.

Under G.L. c. 151A, § 42(b), when no action was taken for judicial review, the Board's decision became final on all questions of fact and law. We incorporate that final determination by reference. Thus the claimant left work involuntarily for urgent, compelling, and necessitous reasons, for purposes of the claimant's eligibility for benefits, in accordance with 430 CMR 4.45 (1)(b).

Taking the facts as found by the review examiner, the claimant is restricting herself to part time work for the same urgent, compelling, and necessitous reasons that she left her previous employment – the need to share child care and the use of a vehicle with her husband. We see nothing in the facts or the record that would indicate that the hours to which claimant has restricted herself (between 4:00 p.m. and 9:00 p.m.) have effectively removed her from the labor market. Thus, we conclude that claimant has met the requirements of the above-quoted 430 CMR 4.45 (1)(b)

We, therefore, conclude as a matter of law that the claimant had good cause for limiting her employment to part-time hours, within the meaning of 430 CMR 4.45, and is capable of, able, available for, and actively seeking work, within the meaning of G.L. c. 151A, § 24(b).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending October 20, 2012, and for subsequent weeks if otherwise eligible.



Stephen M. Linsky, Esq.
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION – October 11, 2013



Judith M. Neumann, Esq.
Member

ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS 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.

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.

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