

0026 4530 42 (Mar. 28, 2019) – Claimant asserted he can work full-time, but restricted himself to part-time hours so as not to diminish his SSDI benefits. He does not meet the requirements of G.L. c. 151A, § 24(b) or 430 CMR 4.45.

**Board of Review  
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**Issue ID: 0026 4530 42**

## **BOARD OF REVIEW DECISION**

### **Introduction and Procedural History of this Appeal**

The claimant appeals a decision by 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 affirm.

The claimant filed a claim for unemployment benefits with the DUA, and the claim was determined to be effective July 22, 2018. On August 22, 2018, the DUA sent the claimant a Notice of Disqualification, informing him that he was not eligible to receive unemployment benefits. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by the claimant, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on January 3, 2019.

Benefits were denied after the review examiner determined that the claimant failed to show that he was capable of, 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 accepted the claimant's application for review and remanded the case to the review examiner to allow the claimant another opportunity to offer evidence regarding his ability to and availability for work. The claimant attended the remand hearing. Thereafter, the review examiner issued his 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 did not meet the requirements of G.L. c. 151A, § 24(b), is supported by substantial and credible evidence and is free from error of law, where the claimant is restricting himself to part-time work due to the receipt of disability benefits.

### **Findings of Fact**

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

1. The effective date of claim is July 22, 2018.

2. The claimant last worked part-time for one and one-half years as a Van Driver.
3. In August of 2017, the claimant last worked full-time as he pursued a claim for SSDI benefits.
4. In November of 2017, the claimant was out of work for at least a month due to a medical issue.
5. Since December of 2017, the claimant received SSDI benefits and the claimant returned to work without reapplication for employment with reduced hours. No separation occurred prior to his return.
6. While receiving SSDI, his earnings are capped at \$1,180.00 per month before his benefits would be adversely affected.
7. The claimant limited his hours of work not to exceed twenty-three hours based on his pay rate of \$11.48 per hour ( $23 \times \$11.43 \times 4.3 = \$1,135.37$ ) in order to avoid a reduction in benefits. The claimant did not desire to exceed \$1,180.00.
8. The claimant is limiting his hours of availability for new employment to part-time for the same reason.
9. The claimant was not and is not physically/medically incapable of full-time work though SSDI limits him to part-time work based upon his earnings. The claimant has no restrictions.
10. The claimant's work search logs indicate that the claimant conducted work search activities on: August 2, 3, 4, 7, 8, 9, 14, 15, 16, 20, 21, 22, 27, 28 and 29, 2018; September 3, 4, 5, 10, 11, 12, 17, 18, 19, 24, 25, 26 and 27, 2018; October 2, 3, 4, 5, 10, 11, 12, 16, 17, 18, 23, 24, 25, 29, 30 and 31, 2018; November 1, 2, 5, 6, 12 and 13, 2018; December 3, 22 and 26, 2018; January 3, 4, 7, 8, 9, 15, 16, 18, 19, 21, 22, 28, 29 and 30, 2019; and February 5, 7, 8, 11, 13, 14, 15, 18, 20, 25, 26 and 27, 2019.

[Credibility Assessment:]

An opportunity for the claimant to provide medical documentation was provided, but the claimant declined to do so arguing that it is irrelevant in light of his contention that he is physically capable of full-time work and has no medical limitations.

At the initial hearing held on November 19, 2018, the claimant's testimony indicated that he was limiting his hours of availability to part-time, just as he limited his hours to part-time with his base period employer for the purposes of his SSDI benefits not being adversely affected. The adverse effect is based solely

on earnings and not hours. The claimant, at the hearing for additional evidence held on March 11, 2019, however, testified several times (in different ways) that he was physically capable of full-time work and no medical restrictions prevent him from doing so. As it is possible that he is fully capable of full-time work and that he is merely limiting his hours of availability for a non-medical reason, a change in the fact that he is limiting his availability to part-time as previously testified to is not warranted.

The claimant also provided an update to his work search log from December 3, 2018, which included the description of each position sought as full-time. This is inconsistent with his previous testimony and his previous work search log, which did not include in the description of whether the position was part-time or full-time.

### Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner and 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. As discussed more fully below, we conclude, as the review examiner did in his decision, that the claimant did not show that he is eligible to receive unemployment benefits.

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 . . . .

Under G.L. c. 151A, § 24(b), the burden of proof is on the claimant to show that he meets each requirement of the statute. The DUA determined that the claimant was ineligible for benefits, because he reported that he was receiving benefits under the Social Security Disability Insurance (SSDI) program. The claimant's report that he was receiving SSDI raises the issue of whether the claimant is capable of, available for, and actively seeking full-time work, as generally required by unemployment law.<sup>1</sup>

The review examiner, after hearing testimony from both hearings, has found that the claimant was limiting his most recent employment to part-time in order to maximize the amount of SSDI benefits he could receive. During the remand hearing, the claimant testified that he was capable of working full-time in December of 2017, when he began receiving disability benefits. Consolidated Finding of Fact # 9. However, he was only working part-time at that point.

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<sup>1</sup> Although not specifically stated in G.L. c. 151A, § 24(b), other provisions of the Massachusetts Unemployment Statute show that unemployment benefits are intended to assist claimants seek and return to *full-time* work. *See, e.g.,* G.L. c. 151A, §§ 29 and 1(r), which provide for the payment of benefits only to those who are unable to secure a full-time weekly schedule of work.

Consolidated Finding of Fact # 7. The only reason indicated in the record as to why he was only working part-time was to get the maximum amount of disability benefits. Consolidated Findings of Fact ## 7 and 8. During the first hearing, the claimant testified that he had worked full-time and that he never reduced his availability to part-time. When asked, however, if he reduced his availability due to his receipt of SSDI, he indicated “yes” and that he could not work over twenty-three hours per week. The claimant has not provided credible evidence to show that he would not do the same (limit himself to part-time availability and work) if he was hired with any future employer.

During the remand hearing, the claimant was given the opportunity to provide new documentation or records to explain his SSDI award and/or his ability to work. The claimant was represented during the remand hearing. He reiterated, through his attorney’s own questioning, that he was able to work full-time and was seeking full-time work. Given this testimony, the claimant has not shown that the DUA’s part-time availability regulations, located at 430 CMR 4.42–4.45, are applicable.

The logical conclusion we must come to is the same conclusion reached by the review examiner initially. The claimant is able to work full-time. However, he restricts himself to part-time work, so that he will not jeopardize his receipt of SSDI benefits. We, therefore, conclude as a matter of law that the review examiner’s decision to deny benefits pursuant to G.L. c. 151A, § 24(b), is supported by substantial and credible evidence and free from error of law, because the claimant has not carried his burden to show that he is available for full-time work.

The review examiner’s decision is affirmed. The claimant is denied benefits for the week beginning July 22, 2018, and for subsequent weeks, until such time as he shows that he meets the requirements of G.L. c. 151A, § 24(b).

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION – March 28, 2019**



Charlene A. Stawicki, Esq.  
Member



Michael J. Albano  
Member

Chairman Paul T. Fitzgerald, Esq. did not participate in this decision.

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS STATE DISTRICT  
COURT OR TO THE BOSTON MUNICIPAL 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.

SF/rh