

The claimant did not provide credible evidence from a medical provider to establish that she was physically capable of returning to work one day after she had given birth, as she contended.

**Board of Review
19 Staniford St., 4th Floor
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member**

Issue ID: 0021 7756 37

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Heidi A. Saraiva, 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 on May 9, 2017, effective May 7, 2017. In a determination issued on May 26, 2017, the DUA disqualified the claimant from receiving benefits for the period beginning May 7, 2017, for an indefinite period thereafter. 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 July 7, 2017. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant had not established that she was physically capable of full-time employment as required under G.L. c. 151A, § 24(b). In rendering her decision, the review examiner questioned the authenticity of a document (Exhibits ## 9a and 9b), purportedly signed by the claimant's physician, contending that the claimant was physically capable of returning to work the day after giving birth. The handwriting and the alleged physician's signature on this document, according to the review examiner, was vastly different from the handwriting and physician's signature on the first medical statement (Exhibits ## 5a and 5b), which restricted the claimant from work.

In her appeal to the Board, the claimant submitted a third document, allegedly signed by the same physician, handwritten on a prescription pad, stating that "[a]ll notes written for [the claimant] were by me and signed by me." After considering this note, the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we remanded the case to the review examiner to take further testimony and evidence regarding the return to work documentation submitted by the claimant, and whether she was physically capable of returning to work the day after giving birth. The claimant attended the remand hearing. Thereafter, the review

examiner issued her 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 conclusion that the claimant failed to meet the capability requirements of the law is supported by substantial and credible evidence and is free from error of law, where, following remand, the review examiner again discredited one of the medical documents submitted by the claimant.

Findings of Fact

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

1. On May 9, 2017, the claimant filed a claim for unemployment benefits effective May 7, 2017.
2. The claimant submitted to the DUA a Health Care Provider's Statement of Capability in an envelope which bore a postmark date of May 16, 2017. The claimant's physician restricted her from work beginning April 18, 2017, due to preterm labor. The document was signed by the physician.
3. The claimant worked as a dental assistant for an employer from January 10, 2010, until April 28, 2017, when she began a leave of absence.
4. The claimant had a return to work date for the employer of August 1, 2017.
5. The claimant worked part time Monday and Wednesday from 8:30am to 5:30pm.
6. The claimant gave birth on May 23, 2017.
7. The claimant was released from the hospital on May 24, 2017.
8. A physician's note contained on a prescription note pad dated July 11, 2017, states; "All notes written for" first name of the claimant "were by me and signed by me. (D/C p Return notes)"
9. The claimant's doctor's note dated August 28, 2017, states the claimant was able to "inquire" about employment after she gave birth.
10. The claimant's husband is disabled and does not work.
11. The claimant's husband is available to care for their children while the claimant works.
12. The claimant is available to work 40 plus hours any shift.

13. During the week beginning May 7, 2017, through the week ending July 1, 2017, the claimant sought work on three different days each week via the web, the telephone, networking with prior colleagues and through a temporary employment agency which specializes in dental positions.
14. On May 26, 2017, the Department of Unemployment Assistance issued the claimant a Notice of Disqualification under Section 24(b) of the Law for the week beginning May 7, 2017 and an indefinite number of weeks thereafter.

[CREDIBILITY ASSESSMENT]

The claimant was asked to have her physician provide testimony relative to the authenticity of her return to work documentation and the date she was medically released to perform full time work. The claimant testified the physician was on vacation during the week the hearing was held. The review examiner left the record open until the following week for the claimant to submit additional medical documentation and allow an opportunity for the physician to provide testimony at her convenience. The claimant submitted medical documentation, which substantiated the date she was released from the hospital after giving birth. However, the medical documentation requested relative to her capability to work, merely stated the claimant was released to “inquire of work.” Ultimately, the claimant’s physician did not participate in the hearing to establish the date the claimant was physically released for work. Additionally, of the four medical documents presented into evidence by the claimant, the only document which provides a return to work date is the one where its authenticity is in question as the penmanship and the physician’s signature significantly differs from the penmanship and the physician’s signature on the other three documents, which all bear great resemblance.

Given the above, this examiner concludes the documentary evidence is not credible and does not support the claimant’s testimony that she was capable of work as of May 24, 2017.

Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the consolidated findings are supported by substantial and credible evidence; and (2) whether the review examiner’s ultimate 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.

The issue before the Board is whether the claimant meets the ongoing eligibility requirements set forth under G.L. c. 151A, § 24(b), which 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 this section of the law, the claimant has the burden to show that she is eligible to receive benefits. As the text of the above statute makes clear, a claimant must satisfy all three conditions (capable, available, and actively seeking work) in order to meet the requirements of G.L. c. 151A, § 24(b). The review examiner initially concluded that the claimant failed to meet the capability requirements under the above section of the law. The review examiner reached this conclusion because she did not credit the one document which the claimant submitted showing a return to work date. Following remand, we affirm the review examiner's decision to deny benefits, as the claimant has failed to meet her burden to show that she is capable of returning to full-time employment.

The Board remanded this case to allow the claimant an opportunity to authenticate her return to work documentation, by having her physician testify at the hearing or provide further documentation signed by her physician, showing the exact date the claimant became capable of performing full-time work following the delivery of her child on May 23, 2017. At the remand hearing, the claimant testified that her physician was unable to attend because she was on vacation that week. The review examiner then left the record open until the following week for the claimant to submit additional medical documentation and to allow the physician to provide testimony at her convenience. The claimant's physician did not testify, but the claimant did submit a fourth medical document (Remand Exhibit # 8), signed by her physician, stating that the claimant "delivered a viable female on 5/23/17" and "was able to inquire about employment thereafter." Nothing in this medical document, however, indicates that the claimant was medically able to return to work in any capacity, and in fact, contradicts the prior medical documentation (Exhibits ## 9a and 9b) submitted by the claimant at the original hearing.

The review examiner's credibility assessment discredits the authenticity of the only document, of the four submitted by the claimant, that provided a return to work date for the claimant. The basis for the review examiner's credibility assessment in this regard was the differing handwriting and signature on this document, as compared to the other three documents signed by the same physician, which all appeared to be consistent. Such credibility assessments are within the scope of the fact finder's role, and, unless they are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. *See School Committee of Brockton v. Massachusetts Commission Against Discrimination*, 423 Mass. 7, 15 (1996). Upon review of the evidentiary record in its entirety, we see no reason to disturb the review examiner's credibility assessment. The record before us therefore establishes that the claimant's contention that she was capable of returning to work on May 24, 2016, is not corroborated by substantial and credible evidence.

We, therefore, conclude as a matter of law that the claimant has failed to show that she is capable of returning to full-time employment, as required under G.L. c. 151A, § 24(b).

The review examiner's decision is affirmed. The claimant is denied benefits for the week beginning May 7, 2017, until such time as the claimant establishes that she meets the capability, availability, and work search requirements of G.L. c. 151A, § 24(b), and is otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION -October 31, 2017



Charlene A. Stawicki, Esq.
Member

**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

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.

SPE/rh