

**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: 0022 9903 83

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Eric Sullivan, a review examiner of the Department of Unemployment Assistance (DUA), to deny the claimant benefits while on an employer-approved medical leave of absence from August 28, 2017, through November 15, 2017. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On September 29, 2017, the agency initially determined that the claimant was not entitled to unemployment benefits. The claimant appealed, and only the claimant attended the hearing. In a decision rendered on December 16, 2017, the review examiner affirmed the agency determination, but ended the disqualification as of November 15, 2017, concluding that the claimant was on an employer-approved leave of absence and was not capable of working from August 28, 2017, through November 15, 2017, and thus, was disqualified under G.L. c. 151A, § 24(b). The Board accepted the claimant's application for review.

Ruling of the Board

After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we conclude that the review examiner's decision is based on substantial evidence and is free from any error of law affecting substantive rights, except for the portion of Finding of Fact # 6 indicating the claimant was cleared to return for light duty work, which is contradicted by the documentary evidence in the record.

In Finding of Fact # 6, the review examiner found, "[t] he claimant was cleared to return to work on a light duty basis while on his leave of absence however [sic] the employer did not have any light duty work available that fit the claimant's limitations of no lifting, standing, sitting or walking for long periods."

At the hearing, the claimant produced three medical notes from his physician. *See Exhibit # 6.* The first note, dated August 23, 2017, indicated the claimant was to undergo spinal surgery on August 30, 2017, and would need to remain out of work for three months following surgery. The second note, dated October 11, 2017, stated simply the claimant "Is not able to work at present." The third note, dated November 15, 2017, indicated the claimant could return to work that day, without restrictions.

The claimant did not produce any medical documentation corroborating his claim that he could perform any work between October 11 and November 15, 2017. The review examiner's finding — based on the claimant's uncorroborated and vague testimony — lacked specificity as to when he was allegedly "cleared to return to work on a light duty basis." The restrictions enumerated within the finding similarly suggest that the claimant's medical condition precluded him from most forms of work, until he was finally cleared to return without restrictions on November 15, 2017.¹

The review examiner's decision is affirmed. The claimant is denied benefits from August 28, 2017, through November 15, 2017.

BOSTON, MASSACHUSETTS
DATE OF DECISION - January 16, 2017



Paul T. Fitzgerald, Esq.
Chairman



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.

JC/rh

¹ If the evidence supported the conclusion that the claimant was cleared for and requested light duty work, but the employer had none available for him, then the claimant would have qualified for benefits during the period of time that he was medically able to perform some work for the employer. See Dir. of Division of Employment Security v. Fitzgerald, 382 Mass. 159 (1980).