

The claimant presented medical documentation establishing that he was capable of returning to work as of a certain date. Therefore, he is not disqualified under G.L. c. 151A, § 24(b), from that date forward.

**Board of Review
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Issue ID: 0024 1760 67

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 indefinitely as of the week ending December 23, 2017. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm in part and reverse in part.

On September 20, 2017, the claimant opened a new claim for unemployment benefits with an effective date of September 17, 2017. On December 15, 2017, the claimant was admitted to the hospital to receive treatment for Post-Traumatic Stress Disorder (PTSD). As a result, On January 27, 2018, the agency determined that the claimant did not meet the capability requirements in accordance with G.L. c. 151A, § 24(b). The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by the claimant, the review examiner modified the agency's initial determination and denied benefits, effective the week ending December 23, 2017, and continuing. The review examiner determined that the claimant did not meet the capability requirements in accordance with G.L. c. 151A, § 24(b), because he failed to submit requested medical documentation releasing him to work. We accepted the claimant's application for review.

After considering 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 provide the claimant with an opportunity to submit the requested medical documentation releasing him to return to work. 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 decision, which concluded that the claimant did not meet the capability requirements of the law for the week ending December 23, 2017, and indefinitely thereafter, is supported by substantial evidence and free from error of law, where, following remand, the consolidated findings of fact establish that the claimant submitted medical documentation from his physician, dated January 19, 2018, releasing him to work as of January 25, 2018.

Findings of Fact

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

1. In 2002, the claimant was diagnosed with post-traumatic stress disorder (PTSD).
2. In September 2017, the claimant opened a new claim for unemployment benefits with an effective date of September 17, 2017.
3. From September 17, 2017 until December 14, 2017, the claimant had no physical limitations or medical issues to prevent him from working.
4. On December 15, 2017, the claimant was admitted to a hospital to receive treatment for his PTSD.
5. During the weeks ending December 23, 2017 through January 27, 2018, the claimant was not able to work because he was in the hospital receiving treatment for his PTSD.
6. During the weeks ending December 23, 2017 through January 27, 2018, the claimant was not available for work because he was in the hospital.
7. During the weeks ending December 23, 2017 through January 20, 2018, the claimant did not look for work because he was unable to work.
8. Around January 18, 2018, the claimant began to look for work.
9. During the week ending January 20, 2018 and subsequent weeks, the claimant looked for maintenance work and grounds keeping work on three to four days of each week using the internet, visiting employer's websites, visiting job search websites, and networking with friends and colleagues.
10. On an unknown date in January 2018, the claimant submitted a "Health Care Provider's Statement of Capability" (the Form) to the Department of Unemployment Assistance (DUA). When the claimant's physician completed the Form, she made a mistake and indicated she began treating the claimant on "12/15/16" and he would be able to return to work full time in "6 months to a year". The correct date the physician began treating the claimant was December 15, 2017. The physician stated she treated the claimant for mood disorder, PTSD and panic disorder.
11. On January 25, 2018, the claimant's physician released him to return to work, full time, without restrictions.

12. For the week ending February 3, 2018 and subsequent weeks, the claimant would have worked full time if full time work was available. The claimant had no limits to his availability.
13. For the week ending February 3, 2018 and subsequent weeks, the claimant had no physical limitations or medical issues to prevent him from working.
14. On March 12, 2018, the claimant submitted a second “Health Care Provider’s Statement of Capability” (the Form 2) to the DUA. When the claimant’s physician completed the Form, she indicated she began treating on “12/15/17”.
15. The second page of the Form 2 was illegible.
16. On March 26, 2018, the claimant submitted a third “Health Care Provider’s Statement of Capability” (the Form 3) to the DUA. When the claimant’s physician completed the Form, she indicated she began treating on “12/15/17”. On the second page of the Form 3, the claimant’s physician responded to the question “If the patient was unable to work, when do you anticipate the patient will be able to return to work?” by stating, “1-25-18”.

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 original conclusion is free from error of law. After such review, the Board adopts the review examiner’s consolidated findings of fact and deems them to be supported by substantial and credible evidence. However, as discussed more fully below, we conclude that the consolidated findings after remand establish that the claimant met the capability requirements of the law as of the week beginning January 28, 2018, and is entitled to benefits.

The claimant was initially disqualified for benefits pursuant to 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

The claimant has the burden of showing that he meets each requirement of the foregoing provision. The review examiner initially concluded that the claimant met the availability and work search requirements set forth above but did not meet the capability requirement, based upon his failure to submit medical documentation. When the claimant appealed the review examiner’s decision to the Board, he asserted that he had obtained the required documentation. The Board therefore remanded the matter to the review examiner to allow the claimant to submit the documentation into the record.

Following remand, based on the new documentation submitted by the claimant, the review examiner's consolidated findings establish that the claimant was capable of returning to work beginning January 25, 2018. The consolidated findings also establish that the claimant was available for work and actively seeking work. The record thus demonstrates that the claimant has met all three requirements of G.L. c. 151A, § 24(b).

We, therefore, conclude as a matter of law that the claimant has been capable of, available for, and actively seeking work, pursuant to G.L. c. 151A, § 24(b), since January 25, 2018.

The review examiner's decision is affirmed in part and reversed in part. The claimant is entitled to receive benefits beginning January 25, 2018, and for subsequent weeks, if otherwise eligible. The claimant is denied benefits beginning December 17, 2017 through January 24, 2018.

BOSTON, MASSACHUSETTS
DATE OF DECISION - July 30, 2018



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

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

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.

CAS/rh