

Claimant, whose Continued Claims Summaries in exhibits and in UI Online showed that he was entering detailed work search efforts each week, fulfilled the work search requirements of § 24(b).

**Board of Review
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Issue ID: 0026 4550 04

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 portion of the review examiner's conclusion denying benefits through October 20, 2018. However, we reverse the portion of the review examiner's conclusion denying benefits beginning on October 21, 2018, for the reasons set forth below.

The claimant was separated from full-time employment and filed an initial claim for unemployment benefits with the DUA on July 21, 2018. On August 15, 2018, the DUA issued a determination disqualifying the claimant from receiving benefits. The claimant appealed that disqualification to the DUA hearings department. Following a hearing on the merits, which the claimant attended, the review examiner affirmed the disqualification and denied benefits in a decision rendered on October 27, 2018. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not physically capable of full-time work from the date he opened his claim until October 22, 2018, and he failed to establish that he was actively seeking work in an occupation for which he is reasonably fitted. Thus, he was indefinitely disqualified pursuant to G.L. c. 151A, § 24(b), as of July 22, 2018. Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, the claimant's appeal, and information from the claimant's UI Online account with the DUA.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant did not establish that he actively searched for work, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant filed an unemployment insurance claim on 7/21/18, and obtained an effective date of his claim of 7/15/18.

2. The claimant was in a motor vehicle crash on 7/27/18, and sustained a spinal strain/sprain.
3. The claimant's chiropractor provided the claimant with a note dated 8/8/18, stating that he was unable to work.
4. The claimant's chiropractor filled out a Health Care Provider's Statement of Capability form on 8/17/18, which stated that the claimant was unable to work.
5. The claimant's chiropractor filled out a Health Care Provider's Statement of Capability form on 8/29/18, which stated that the claimant was able to work, part-time, as of 8/20/18, and was not to lift more than fifteen to twenty pounds.
6. The claimant's chiropractor provided the claimant with a note stating that he is able to work without restrictions, effective 10/22/18.

Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the 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 findings of fact and deems them to be supported by substantial and credible evidence. However, as discussed more fully below, while we agree that the review examiner's findings of fact support the conclusion that the claimant was not physically capable of full-time work until October 22, 2018, we believe that the evidence before us supports the conclusion that the claimant has been fulfilling his work search requirements.

The review examiner's analysis considered the claimant's eligibility for unemployment benefits 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 G.L. c. 151A, § 24(b), the claimant has the burden to prove that he meets each requirement of this statute. Based on medical documentation furnished by the claimant before and after the hearing, the review examiner concluded that the claimant was not physically capable of performing full-time work, without restrictions, until October 22, 2018. We agree, and conclude as a matter of law that the claimant was ineligible for benefits from July 15 through October 22, 2018, because he was not physically capable of full-time work.

However, the review examiner also concluded — without making any corresponding findings of fact — that the claimant did not provide evidence sufficient to establish that he actively searched

for work. In view of all of the evidence before us, and particularly since the review examiner neglected to issue any findings of fact regarding the claimant's work search efforts, we conclude that the claimant established an active and adequate work search record.

The review examiner's legal analysis and conclusion cited the document the claimant provided after the hearing (Hearings Exhibit #10), and discounted its validity, stating as follows:

[T]he document does not describe the work search activities performed, such as inquiring in person about open positions, contacting a potential employer by phone to inquire about open positions, applying for a position, or interviewing for a position, nor does it show what the outcome of each work search activity was.

The data compiled by the claimant for Exhibit # 10 corresponds precisely with the entries he made in his Continued Claims Summaries for the weeks ending August 4, August 11, and August 18, 2018. *See* Hearings Exhibit # 1, pp. 4, 6, and 8.¹ For each of these weeks, the claimant entered into the UI Online database the name of each potential employer, the person contacted, the contact method, other contact information, the type of work sought, and the results of his efforts.

We take administrative notice of the claimant's other Continued Claims Summaries that have been compiled through UI Online into his Fact-Finding Summary page, for each week that he has certified for benefits. Review of these Summaries shows that the claimant has consistently entered the pertinent data for each work search contact he has made for the weeks when he has claimed benefits. We take further administrative notice that the claimant reports that his primary language is Spanish, and his highest level of education is a high school diploma.

While it is certainly preferable for claimants who are out of work and seeking unemployment benefits to keep a summary document tracking all of their efforts, under these circumstances, where this claimant has consistently and successfully used the database provided by the DUA for claimants to report their work search efforts, he has credibly established that he has been making the work search efforts required by G.L. c. 151A, § 24(b).

We, therefore, conclude as a matter of law that the claimant established that he was capable of, available for, and actively seeking full-time employment, as of October 22, 2018.

The review examiner's decision is affirmed in part and reversed in part. The claimant was physically incapable of full-time work and remains ineligible for benefits from July 22, 2018, through October 20, 2018. However, the claimant is entitled to receive benefits for the week ending October 27, 2018, and for subsequent weeks, if otherwise eligible.

¹ We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. *See* Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 24, 2018



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

Member Charlene A. Stawicki, 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

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.

JPC/rh