

Because the claimant's mental health reasons for limiting her benefit year availability to part-time work were the same as those that caused her to leave her full-time job, and she is actively seeking new employment, she is eligible for benefits pursuant to G.L. c. 151A, § 24(b) and 430 CMR 4.45.

**Board of Review
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Issue ID: 0026 7043 89

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 we affirm in part and reverse in part.

The claimant resigned from her position with her former employer on July 19, 2018. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on September 29, 2018. 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 12, 2019. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not capable of working full-time, and, thus, she 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 remanded the case to the review examiner to make subsidiary findings from the record about the reason for the claimant's separation from employment, as well as whether she was able, available for, and actively seeking part-time work. 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's inability to work full-time rendered her ineligible for benefits under G.L. c. 151A, § 24(b), is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant most recently worked full-time, from July 31, 2017, until July 19, 2018, as a drug and alcohol counselor.

2. On July 19, 2018, the claimant went to the hospital to seek treatment for her mental health. On her way to the hospital, the claimant contacted her employer and notified them she was on her way to the hospital to seek treatment for her mental health.
3. On July 19, 2018, the claimant quit her employment to seek treatment for her mental health.
4. On July 19, 2018, the claimant was admitted to the hospital for mental health treatment.
5. On July 21, 2018, the claimant was released from the hospital and told to seek additional treatment at a mental health facility.
6. The claimant opened a new claim for unemployment benefits with an effective date of July 22, 2018.
7. From July 22, 2018, until August 2, 2018, the claimant was not able or available for work because she waited for a bed to become available at a mental health facility.
8. On August 2, 2018, the claimant was admitted to a treatment center to receive treatment for mental health related issues. The claimant was released on August 9, 2018.
9. The claimant did not look for work between the weeks ending July 28, 2018 and August 4, 2018, because she sought treatment for her mental health.
10. On Friday August 10, 2018, after she was released from the treatment center, the claimant began to look for work.
11. The claimant did not look for work on three days during the week ending August 11, 2018, because she began to look for work on Friday, August 10, 2018.
12. During the weeks ending July 28, 2018, and August 11, 2018, the claimant was not able to work because of her mental health related issues.
13. During the weeks ending July 28, 2018, and August 11, 2018, the claimant was not available for work [sic] mental health related issues.
14. During the week ending August 18, 2018, and subsequent weeks, the claimant was not available for full-time work because of her mental health related issues. The claimant was available for part-time work.

15. During the week ending August 18, 2018, and subsequent weeks, the claimant was not able to work full-time because of her mental health related issues. The claimant was able to work part-time.
16. During the week ending August 18, 2018, and subsequent weeks, the claimant looked for full-time work and part time work as a counselor, clinician and hairdresser on five days of each week. The claimant searched online and at her local career center.
17. On August 30, 2018, the Department of Unemployment Assistance (DUA) received a "Health Care Provider's Statement of Capability" (the Form) completed by the claimant's doctor. The doctor indicated she began treating the claimant on "5/9/18" and the nature of the condition the claimant was being treated for was "psychiatric". The doctor checked the box next to "N" when she responded to the question "Has the patient been able to work in a full-time position since 7/22/2018" and indicated the claimant could not work full-time was because of "continued impairment in functioning" and responded to the question "If the claimant is unable to work, when do you anticipate the patient will be able to return to work" by stating, "Unknown". The doctor signed the Form on August 28, 2018.
18. On the Form, the doctor responded to the question "Is the patient currently able to work in a part-time capacity with no restrictions?" by checking the box next to "Y".
19. As of January 11, 2019, the claimant had not provided the DUA with an updated "Health Care Provider's Statement of Capability" indicating she was able to return to work 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 original 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. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant is ineligible for benefits.

At issue in this appeal is whether the claimant met the requirements of 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

Although not specifically stated in G.L. c. 151A, § 24(b), other provisions of the statute show that unemployment benefits are intended to assist individuals return to *full-time* work.¹ Because the claimant's physician stated on Exhibit 4, a DUA Health Care Provider's Statement of Capability form completed on August 28, 2018, that the claimant was unable to work full-time, the review examiner concluded that the claimant did not meet the requirements under § 24(b). Because DUA permits individuals to limit their availability to part-time work under certain circumstances, we remanded the case to the review examiner to take a closer look at the record.

Specifically, we wanted to know whether the claimant's circumstances met the criteria set forth under 430 CMR 4.45, which provides, in relevant part, as follows:

(1) An individual otherwise eligible for benefits may limit his/her availability for work during the benefit year to part-time employment provided, that the individual: . . .

(b) establishes to the satisfaction of the commissioner that the reasons for leaving his or her employment were for such an urgent, compelling, and necessitous nature as to make his or her separation involuntary; and establishes to the satisfaction of the commissioner that the same or related urgent, compelling, and necessitous reasons require the individual to limit availability for work during the benefit year to part-time employment; and such limitation does not effectively remove the individual from the labor force

Consolidated Finding # 3 provides that the claimant's reason for leaving her last job were for mental health reasons. "[A] 'wide variety of personal circumstances' have been recognized as constituting 'urgent, compelling and necessitous' reasons under" G.L. c. 151A, § 25(e), "which may render involuntary a claimant's departure from work." Norfolk County Retirement System v. Dir. of Department of Labor and Workforce Development, 66 Mass. App. Ct. 759, 765 (2009), quoting Reep v. Comm'r of Department of Employment and Training, 412 Mass. 845, 847 (1992). Medical conditions are recognized as one such reason. See Dohoney v. Dir. of Division of Employment Security, 377 Mass. 333, 335–336 (1979). Consolidated Findings ## 14 and 15 provide that it was this same mental health condition that caused her to limit her availability to work only part-time during the benefit year. Moreover, Consolidated Finding # 16 shows that the claimant engaged in an active work search for a variety of jobs beginning with the week ending August 18, 2018.

Given these findings, we are satisfied that the claimant limited her availability to part-time work during the benefit year for the same urgent, compelling, and necessitous reason that caused her separation from employment, and that this limitation has not effectively removed the claimant from the labor force. We, therefore, conclude as a matter of law that the claimant is eligible for benefits under G.L. c. 151A, § 24(b), because she meets the part-time availability requirements under 430 CMR 4.45.

¹ 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.

The portion of the review examiner's decision that disqualified the claimant from July 22 through August 11, 2018, is affirmed. The portion of the review examiner's decision that disqualified the claimant from receiving benefits indefinitely thereafter is reversed. The claimant is entitled to receive benefits for the week beginning August 12, 2018, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION – March 29, 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

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.

AB/rh