

**The claimant did not keep a work search log and was, therefore, unable to establish that he engaged in active work search activities each week, as required by the agency.**

**Board of Review  
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Member  
Michael J. Albano  
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**Issue ID: 0028 6603 82**

## **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 claimant filed a claim for unemployment benefits with the DUA with an effective date of December 30, 2018. On January 16, 2019, the agency issued a notice of disqualification stating that the claimant did not establish he was capable of, available for, and actively seeking work, as required under 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 affirmed the agency's initial determination and denied benefits in a decision rendered on June 18, 2019. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant did not meet the capability, availability, and work search requirements of G.L. c. 151A, § 24(b), and, thus, he was not entitled to benefits. 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 obtain additional evidence pertaining to the claimant's ability to work and his work search efforts. The claimant attended the remand hearing. Thereafter, the review examiner issued his 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, availability and work search requirements of 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 effective date of the claim is December 30, 2018.

2. The claimant's usual occupation is as a Laborer for construction companies.
3. The claimant sustained a back injury in February of 2017, for which he ultimately received Workers' Compensation benefits.
4. In or about September of 2018, the claimant underwent surgery for his back injury.
5. On October 4, 2018, the claimant's last employer terminated his employment (per separation issue start date).
6. The claimant received his last Workers' Compensation benefits check between his separation and filing a claim for unemployment benefits.
7. For the week of December 30, 2018 to January 5, 2019, the claimant certified that he was not able to work, not available to work and not looking for work.
8. The claimant's certifications thereafter indicated that he was able to, available for and looking for work.
9. On March 4, 2019, the claimant's appeal to the DUA stated, "At this moment, because of my medical condition, I am therefore unable to work for now and since I had surgery."
10. On May 28, 2019, the claimant's physician certified that that claimant was being treated for radiculopathy, lumbar region.
  - a. The physician checked the box "No" to the question, "Has the patient been able to work since 12/30/2018?"
  - b. The physician checked the box "No" to the question, "Is the patient currently able to work in a full-time capacity with no restrictions?"
  - c. The physician indicated "4/11/18" to the question, "If no, on what date did the patient become unable to work full-time?"
  - d. The physician answered the question, "If no, list why the patient cannot work full-time without restrictions, or, if the patient can work with restrictions, explain the restrictions" by stating, "Persistent back pain issues."
  - e. The physician checked the box "No" to the question, "Is the patient currently able to work in a part-time capacity with no restrictions?"
  - f. To the question, "If no, list why the patient cannot work part-time or explain what restrictions the patient has in his/her ability to work in a part-

time capacity?” [sic] the answer was “Sedentary → Light Duty per DoL regulations.”

i. The handwriting is different than what is found in the rest of the form.

ii. The claimant does not know why the handwriting is different for the one section when compared to all other handwriting on the form.

g. The physician answered, “Unclear,” to the question, “If the patient is unable to work, when do you anticipate the patient will be able to return to work?”

h. Under, “Please list any other information regarding the patient’s capability to work full-time,” the physician stated, “Vocational retraining recommended.”

11. When the claimant first began claiming benefits, the claimant performed work search activities once a week.

12. In August of 2019, the claimant increased his efforts and conducted a work search once, twice or three times per week.

13. The claimant utilizes various job seeking applications on his phone.

14. The claimant did not maintain a work search log.

### Ruling of the Board

In accordance with our statutory obligation, we review the record and 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. 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. We further believe that the review examiner’s legal conclusion that the claimant did not meet the requirements of G.L. c. 151A, § 24(b), is supported by the substantial and credible evidence in the record.

The issue before the Board is whether the claimant meets 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 . . . .

Under this section of law, the claimant has the burden to show that he meets each requirement that he be capable of, available for, and actively seeking suitable work. See Evancho v. Dir. of Division of Employment Security, 375 Mass. 280, 282–283 (1978).

We remanded this case to the review examiner to obtain additional evidence pertaining to the claimant's ability to work and his work search efforts. After remand, the review examiner found that the claimant's statement of capability form indicated that the claimant's ability to work part-time was restricted to sedentary and light duty work per DOL regulations. However, the review examiner called into question the veracity of this statement by noting that the handwriting used to make the statement is different from the handwriting used on the rest of the form. In light of these findings, we are unable to determine on this record whether the claimant was capable of working in any capacity after filing his claim. Normally, we would remand for additional evidence in order to obtain clarification on this issue, but that will not be necessary in this case, because, in order to establish eligibility for benefits, the claimant must not only show that he is able to work, but also that he is available for work *and* actively searching for work.

Here, the review examiner found that the claimant did not keep a work search log, and, therefore, he did not establish that he engaged in active work search activities each week, as required by the agency. Since the claimant was not actively looking for work during the benefit year, regardless of his ability to work and his availability, he is not eligible for benefits.

We, therefore, conclude as a matter of law that the claimant has not met the capability, availability and work search requirements of G.L. c. 151A, § 24(b).

The review examiner's decision is affirmed. The claimant is denied benefits as of the week ending January 5, 2019, and indefinitely thereafter, until he meets the requirements of G.L. c. 151A, § 24(b).

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - November 15, 2019**



Paul T. Fitzgerald, Esq.  
Chairman



Charlene A. Stawicki, Esq.  
Member

Member Michael J. Albano 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](http://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.

SVL/rh