

Where the claimant separated from her most recent employment for urgent, compelling, and necessitous medical reasons, the fact that she is only capable of part-time work is not disqualifying pursuant to 430 CMR 4.45(1)(b).

**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
Michael J. Albano
Member**

Issue ID: 0030 9316 02

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 reverse.

After separating from her employment, the claimant re-opened a previous claim for unemployment benefits, effective March 17, 2019. She then resumed certifying for benefits on that claim. On June 4, 2019, the DUA issued a Notice of Disqualification, informing the claimant that she was indefinitely ineligible for benefits beginning March 17, 2019. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by the claimant via telephone, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on June 25, 2019. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not capable of full-time work and, thus, 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 accepted the claimant's application for review. 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, and the claimant's appeal.

The issue before the Board is whether the review examiner's conclusion that the claimant is not eligible to receive benefits pursuant to 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 findings of fact are set forth below in their entirety:

1. Prior to re-opening her claim for unemployment insurance benefits, the claimant worked as a crew member for her most recent employer, a coffee and doughnut establishment. The claimant left this job due to health issues. The claimant has

weight issues and could not work for this establishment as the claimant is planning on having weight loss surgery and could not work preparing food. The claimant's last date of work with this employer was March 22, 2019.

2. The claimant re-opened her claim for unemployment for the week ending March 23, 2019.
3. The claimant has not been able and available to work fulltime since the week ending March 23, 2019 due to health issues. The claimant has only been able and available to work part-time.
4. The claimant is planning on having weight loss surgery once she meets her weight loss goal. The claimant is working with a nutritionist.
5. The claimant has been looking for work weekly since the week ending March 23, 2019 and keeping a work search activity log. The claimant is looking for work in offices and at retail establishments.
6. In a health care provider's statement of capability form dated June 7, 2019, the claimant's doctor listed the following medical issues regarding the claimant: obesity, anxiety, foot & back pain (Exhibit 5).
7. On the aforementioned form, the claimant's doctor selected "no" to the following question: "Has the patient been able (or capable) to work since 3/17/2019 (Exhibit 5)." On this form, the claimant's doctor listed "yes" to the following question: "Is the patient currently able to work in a part-time capacity with no restrictions (Exhibit 5 Page 1)."
8. On June 4, 2019, the Department of Unemployment Assistance issued a Notice of Disqualification denying the claimant benefits under Section 24(b) of the Law commencing the week ending March 23, 2019 and until she met the requirements of the Law (Exhibit 6).
9. The claimant appealed the Notice of Disqualification (Exhibit 6).

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 conclusion is free from error of law. After 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, we believe that the review examiner's findings of fact support the conclusion that the claimant is entitled to benefits under G.L. c. 151A, § 24(b), because, in this case, the claimant was only required to be capable of part-time work and she actively searched for such work.

In order to be eligible for unemployment benefits, a claimant must be capable of, available for, and actively seeking work for each week in which benefits are claimed. This requirement is taken from 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 burden of proof is on the claimant. *See Evancho v. Dir. of Division of Employment Security*, 375 Mass. 280, 282–283 (1978) (“the burden rests on the unemployed person to show that [her] continued unemployment is not due to [her] own lack of diligence”). If the claimant fails to show that she meets any one of the three requirements described in G.L. c. 151A, § 24(b), she is disqualified from receiving benefits until such time as she meets all of the requirements.

Claimants generally are required to be available for *full-time* work in each week that they request unemployment benefits. Here, the review examiner disqualified the claimant for this specific reason. However, there are several exceptions to this general rule. One of these exceptions is addressed by 430 CMR 4.45(1), which provides in pertinent part as follows:

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

In this case, the claimant conceded that she was not capable of full-time work due to several health conditions. However, the review examiner credited the claimant’s testimony and healthcare provider’s statement that she has been capable of part-time work since she reopened her claim effective March 17, 2019. The review examiner also credited the claimant’s testimony that she has been actively seeking work since that date as well. In addition, the claimant separated from her most recent employment due to these same medical conditions. The DUA previously determined that this separation from employment was due to urgent, compelling, and necessitous reasons. Pursuant to the above regulation, the claimant may limit herself to part-time work.

We, therefore, conclude as a matter of law that the claimant met all of the requirements of G.L. c. 151A, § 24(b). The review examiner's decision is reversed. The claimant is entitled to receive benefits beginning March 17, 2019, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION – September 25, 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.

JRK/rh