

**Based on updated medical documentation verifying when the claimant became capable of returning to work, she was entitled to benefits under G.L. c. 151A, § 24(b), as of the revised date.**

**Board of Review  
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**Issue ID: 0032 0395 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. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm in part and reverse in part.

The claimant separated from employment and filed a claim for unemployment benefits with DUA, effective August 25, 2019. Her claim was denied in a determination issued on October 2, 2019. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by the claimant, the review examiner overturned the agency's initial determination in part and awarded benefits effective October 27, 2019, in a decision rendered on November 2, 2019. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not medically cleared for work prior to October 27, 2019, 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 remanded the case to the review examiner to consider documentation the claimant submitted after the hearing that indicated she was medically cleared to work prior to the week of October 27, 2019. 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 was not capable of working until the week of October 27, 2019, and was, therefore, ineligible prior to that date, 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 worked part time as a registered nurse at [sic] hospital.

2. On June 25, 2019, the claimant went to the emergency room due to a neurological illness and was admitted for several days.
3. Due to the illness, the claimant could not work because she lost vision in her left eye, had numbness, and had difficulty with balance.
4. The claimant was on medical leave for several weeks until she was terminated.
5. The claimant filed a claim for unemployment benefits effective August 25, 2019.
6. During the week ending August 31, 2019, the claimant was not cleared to work by her doctor.
7. During the week ending August 31, 2019, the claimant did not have any scheduling restrictions that would prevent her from working.
8. During the week ending August 31, 2019, the claimant looked for work at least five (5) times per week utilizing the internet and submitting job applications.
9. The claimant became capable of working full-time on October 14, 2019.

[Review Examiner's Comment:]

At the remand hearing, Remand Exhibits 5 and 7 were entered into the record. According to the claimant's physician, in a letter dated October 15, 2019, and a Health Care Provider Statement of Capability dated October 25, 2019, the documentation was consistent that the claimant became capable of working full-time on October 14, 2019.

### 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 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 initial legal conclusion that the claimant was not eligible to receive benefits under G.L. c. 151A, § 24(b) through the week ending October 26, 2019.

At issue in this case is whether the claimant has shown that, while seeking unemployment benefits under her claim, she met the requirements of G.L. c. 151A, § 24(b). This provision states, in relevant part:

[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 . . . .

Since August 25, 2019, is the effective date of the claim, we consider whether the evidence shows that the claimant was capable of, available for, and actively seeking full-time work as of this date.

At the time of the initial hearing, the claimant had submitted documentation from her healthcare provider, dated September 20, 2019, which showed that her healthcare provider anticipated that the claimant would be medically cleared from work on approximately October 24, 2019. *See* Exhibit # 4.<sup>1</sup> Based on this information, the review examiner concluded the claimant was not medically capable of working through the week ending October 26, 2019, and, therefore, was ineligible to receive benefits through that week. *See* Remand Exhibit # 1. At the hearing, the claimant informed the review examiner that she had an updated healthcare provider's statement which showed that she was medically cleared to return to work on October 14, 2019, and would be submitting it to the DUA.<sup>2</sup> The Board observed that the agency had received this document through the DUA's electronic record keeping system, UI Online, and subsequently remanded the matter to allow the review examiner to review the updated documentation. This document was entered into the record as Remand Exhibit # 3.

Based on the new documentation submitted by the claimant, the review examiner's consolidated findings now provide that the claimant was capable of returning to work beginning October 14, 2019. *See* Consolidated Finding of Fact # 9. The consolidated findings also establish that the claimant was available for and actively seeking work as of the week ending August 31, 2019. *See* Consolidated Findings of Fact # 7 and 8.

We, therefore, conclude as a matter of law that the claimant has met all three requirements of G.L. c. 151A, § 24(b), as of the week ending October 19, 2019.

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<sup>1</sup> Exhibit # 4 is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. *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).

<sup>2</sup> While not explicitly incorporated into the review examiner's findings, this testimony is also part of the unchallenged evidence introduced at the hearing.

The portion of the review examiner's decision that disqualified the claimant from the week ending August 25, 2019, through the week ending October 12, 2019, is affirmed. The claimant is entitled to receive benefits starting in the week ending October 19, 2019, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION – January 15, 2020**



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](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.

LW/rh