

The claimant did not meet the requirements of G.L. c. 151A, § 24(b), while her availability was only 10 hours per week and other restrictions limited the type of work she could perform. However, once the claimant was able to work 20 hours per week, despite her other restrictions, she met the availability requirements of this section of law.

**Board of Review
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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 filed a claim for unemployment benefits with an effective date of August 11, 2019. On November 21, 2019, the agency issued a Notice of Disqualification under G.L. c. 151A, § 24(b), stating that the claimant did not submit the requested medical documentation, and, therefore, she was ineligible for benefits beginning on August 11, 2019, and until she met the requirements of the law. 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 30, 2020. 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 pursuant to G.L. c. 151A, § 24(b), and, thus, was disqualified. 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 capability, availability and work search efforts. The claimant participated in 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 did not meet the capability, availability and work search requirements pursuant to G.L. c. 151A, § 24(b), is supported by substantial and credible evidence and is free from error of law, where, after remand, the review examiner found that the claimant's availability for work was restricted due to her medical condition.

Findings of Fact

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

1. The claimant filed a claim for unemployment benefits with an effective date of August 11, 2019.
2. Prior to filing her claim, the claimant worked full-time hours.
3. The claimant had a baby in April 2019.
4. The claimant was unable to return to work because of a neck injury.
5. In June 2019, the claimant separated from her former employer due to her neck injury.
6. The Department of Unemployment Assistance found the claimant eligible for benefits on her separation from that employer. It was determined that the claimant left work due to being physically unable to resume her regular duties.
7. The claimant separated from that employer due to the same medical condition that has prevented her from working full-time since August 11, 2019.
8. On July 25, 2019, the claimant was medically released to return to work with gradual increase in workload, with a 25-pounds weight limit.
9. As of August 11, 2019, the claimant's doctor informed her that she could work 10 hours per week.
10. In or about October or November 2019, the claimant began work as a personal care aide. The claimant worked 2 hours per week.
11. Since August 11, 2019, the claimant was available to work daily.
12. As of August 11, 2019, the claimant searched for part-time work as a cashier and sales associate.
13. The claimant has past work experience as a cashier and sales associate.
14. The claimant searched for work by completing job applications online, contacting potential employers and interviewing with potential employers.
15. As of January 2020, the claimant was medically released to work 20 hours per week.

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. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant is indefinitely ineligible for benefits under G.L. c. 151A, § 24(b).

At the outset, we observe that the underlying purpose of the unemployment compensation statute is to provide temporary relief to persons who are out of work and unable to secure work through no fault of their own. Connolly v. Dir. of Division of Unemployment Assistance, 460 Mass. 24 (2011) (further citations omitted). In order to establish that they are unable to secure work through no fault of their own, claimants must meet the specific eligibility criteria set forth in 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 Massachusetts Unemployment Statute show that unemployment benefits are intended to assist claimants in seeking and returning to *full-time* work. *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. Thus, a claimant must generally be capable of, available for and actively seeking full-time work while requesting unemployment benefits. However, there are a limited number of circumstances, which are set forth under 430 CMR 4.45, when a claimant is permitted to restrict that availability to part-time work. In relevant part, these regulations state 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:

(a) has a prior work history of part-time employment; establishes to the satisfaction of the commissioner good cause for restricting availability during the benefit year to part-time employment and that such good cause reason is the same as, or is related to that which existed during the prior work history of part-time employment; and is available during the benefit year for at least as many hours of work per week as used to establish the prior work history of part-time employment; or

(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, and

(2) An individual who falls under the provisions of 430 CMR 4.45(1)(b) who obtains suitable part-time employment during the benefit year shall be determined not to be in partial unemployment and will not be eligible to receive partial unemployment benefits while so employed in the benefit year.

In addition to enumerating the circumstances under which claimants are allowed to limit their availability to part-time, these regulations further stress that even with this allowance for reduced availability, in order to be eligible for benefits, the restrictions on the claimant's availability cannot be so severe that they effectively remove her from the labor force. 430 CMR 4.45(1)(b).

The prohibition against a claimant removing herself from the labor force is in accordance with the decisions of the Supreme Judicial Court's interpretation of G.L. c. 151A, § 24(b). *See e.g. Keogh v. Dir. of Division of Employment Security*, 370 Mass. 1, 6 (1976) (unemployment compensation is specifically directed towards a class of unemployed persons who have been and continue to be attached to the labor force); *Conlon v. Dir. of Division of Employment Security*, 382 Mass. 19, 25 (1980) (benefits must be denied a claimant who limits her availability so that she effectively removed herself from the labor force, even if she had a valid personal reason for doing so) (further citation omitted); *Evancho v. Dir. of Division of Employment Security*, 375 Mass. 280, 282 (1978) (an individual seeking unemployment benefits is required to show she made a reasonable and good faith effort to find new employment). Consistent with these decisions, the DUA requires that a claimant must not have unreasonable restrictions on shifts, time of work, wages or locations that would make obtaining suitable work unlikely. *See* DUA Adjudication Handbook, Ch. 4, § 3(1).

We now consider whether the claimant met the requirements set forth in G.L. c. 151A, § 24(b), 430 CMR 4.45, and the relevant DUA policies.

The review examiner originally found that the claimant was not entitled to unemployment benefits as of the start of her claim and indefinitely thereafter, because she was not medically released to return to full-time work. In light of the provisions set forth in 430 CMR 4.45, allowing for part-time availability under certain circumstances, we remanded this case to the review examiner to afford the claimant an opportunity to submit medical documentation pertaining to her ability to work and availability for work part-time. After listening to the claimant's testimony and reviewing her medical documentation, the review examiner found that the claimant was restricted from lifting more than 25 pounds in July, 2019. The review examiner further found that, as of August 11, 2019, per the claimant's medical providers, the claimant's neck injury prevented her from working more than 10 hours per week, and her availability increased to 20 hours per week in January, 2020. Finally, the review examiner found that as of August 11th, the claimant was searching for work as a cashier or sales associate, both positions in which she had prior experience. The claimant ultimately found work as a personal care aid in October or November, 2019, but she was only working two hours per week and performing cleaning work only, rather than providing more strenuous personal care to an individual.¹

The consolidated findings establish that the claimant has been actively searching for work since filing for benefits in August, 2019, so her work search efforts are not at issue in this case. Because

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).

the issue affecting the claimant's availability is a medical condition, the claimant's capability and availability for work overlap in this case. Since the evidence establishes that the claimant has been capable of performing some light duty work, we must conclude that she is capable of working. Thus, the only remaining issue in this case is whether the claimant's limited availability, which was significantly reduced due to the neck injury she sustained prior to filing for unemployment benefits in August 2019, has effectively removed her from the labor force.

As noted above, 430 CMR 4.45(1)(b) allows claimants who have left their employment for an urgent, compelling and necessitous reason to limit their availability to part-time during the benefit year, if their availability is reduced due to the same reason that caused them to leave employment. Here, the review examiner found that the claimant separated from her prior employment because her medical condition prevented her from resuming her regular duties, and the same medical condition restricted her availability after she filed her claim. Thus, pursuant to 430 CMR 4.45(1)(b), the claimant may reduce her availability for work to part-time during the benefit year and this will not affect her eligibility for benefits. However, as stated previously, the reduction to the claimant's availability must not be so severe that it effectively removes her from the labor force.

A 40-hour per week schedule is typically considered full-time work, and part-time work is generally viewed as working less than 40-hours. However, what is considered full or part-time work in any given sector is dependent upon a number of factors. Given this variety in how work schedules are defined in different fields, when determining whether or not a worker has reduced her availability to the point that she is no longer attached to the labor force, we will not draw a line stating when a claimant's hours of availability are so low that the claimant is no longer considered a part of the labor force. Instead, we must look at all of the factors affecting the claimant's availability.

As noted above, between August 11, 2019, and December 31, 2019, the claimant was only available for work 10 hours per week. Clearly, this is a substantial reduction in availability regardless of the work sector considered — it is a 75 percent reduction from a 40-hour schedule, a 67 percent reduction from a 30-hour schedule and a 50 percent reduction from a 20-hour schedule. However, this factor alone is not enough for us to conclude that the claimant is not genuinely attached to the labor force. We must also look at the other restrictions on the claimant's ability to work. Here, in addition to the claimant's significantly reduced hours of availability, she also had a 25-pound weight-lifting restriction, which limited the types of jobs the claimant was able to perform. In our view, the combination of the claimant's significantly limited hours of availability and the restrictions on the type of work she could perform, reduced the claimant's chances of realistically obtaining work to the point that she was effectively removed from the labor force. Thus, the claimant did not meet the availability requirements under G.L. c. 151A, § 24(b), and 430 CMR 4.45, between August 11, 2019, and December 31, 2019. We note in this regard that the period between August and December, 2019, during which the claimant was seeking employment was a period of historically low unemployment. It is reasonable to assume that, in such a period, the claimant's working hours and lifting restrictions prevented her from obtaining any more than two hours of weekly employment. This confirms our belief that, between August and December, 2019, the combination of the claimant's restrictions effectively removed her from the labor force.

However, we believe that, once the claimant became available for 20 hours of work per week, this increase in availability significantly advanced her chances of obtaining work, despite the other restrictions on the type of work that she could perform. Thus, we conclude that, as of January 1, 2020, the claimant met the availability requirements of G.L. c. 151A, § 24(b) and 430 CMR 4.45.

The review examiner's decision is affirmed in part and reversed in part. We affirm the part of the decision that denied benefits to the claimant between the weeks ending August 17, 2019, and December 28, 2019. We reverse the part of the decision that denied benefits to the claimant as of the week ending January 4, 2020. The claimant is entitled to receive benefits for the week ending January 4, 2020, and for subsequent weeks, if otherwise eligible.



Paul T.

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DATE OF DECISION - June 17, 2020

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
(See Section 42, Chapter 151A, General Laws Enclosed)**

The last day to appeal this decision to a Massachusetts District Court is ordinarily thirty days from the mail date on the first page of this decision. However, due to the current COVID-19 (coronavirus) pandemic, the 30-day appeal period does not begin until July 1, 2020². If the thirtieth day falls on a Saturday, Sunday, or legal holiday, the last day to appeal this decision is the next business day 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.

SVL/rh

² See Supreme Judicial Court's Second Updated Order Regarding Court Operations Under the Exigent Circumstances Created by the COVID-19 (CORONAVIRUS) Pandemic, dated 5-26-20.