

Claimant, whose physician would not release him to return to perform any work at all until after completing cardiac rehabilitation program, was not capable of working and was not in unemployment until his doctor released him to work. He is disqualified under G.L. c. 151A, §§ 29 and 1(r).

**Board of Review
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Issue ID: 0056 7364 96

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 the denial of benefits through November 23, 2020. We also ask that the DUA open and investigate a new issue regarding the claimant's eligibility for benefits as of November 24, 2020.

The claimant began a leave of absence from his employer on October 9, 2020. He reopened an existing claim for unemployment benefits with the DUA on October 13, 2020, which was denied in a determination issued on December 1, 2020. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the claimant, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on February 19, 2021. We accept the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not in unemployment within the meaning of the law while on a medical leave of absence, and, thus, he was disqualified under G.L. c. 151A, §§ 29(a) and 1(r). 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 decision, which concluded that the claimant is not eligible for benefits while on a medical leave of absence, is supported by substantial and credible evidence and is free from error of law, where he was not capable of working for the employer while on a medical leave of absence.

Findings of Fact

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

1. The claimant began working for the employer, a restaurant, in September 2017 or 2018 as a Manager.

2. The claimant's immediate supervisor was the District Manager.
3. The claimant requested a leave of absence because he needed to have heart surgery. The claimant's last day of work was 10/08/2020.
4. The claimant's unpaid leave of absence began on 10/09/2020.
5. On 10/09/2020, the claimant was admitted to the hospital because he had a bad cough. The claimant was diagnosed with having fluid around his heart, which required surgery.
6. On 10/13/2020, the claimant had heart surgery.
7. The claimant was released from the hospital on 10/17/2020.
8. The claimant was required to participate in cardiac rehabilitation.
9. The claimant asked his doctor to release him to work light duty, which was denied.
10. The claimant's doctor would not release him to return to work until he completed his cardiac rehabilitation.
11. On 11/24/2020, the claimant's doctor released the claimant to return to work.
12. On 11/24/2020, the claimant returned to work.

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. Upon such review, the Board adopts the review examiner's findings of fact and deems them to be supported by substantial and credible evidence. However, while we believe that the review examiner's findings of fact support the conclusion that the claimant is ineligible for benefits through November 24, 2020, we believe that this disqualification from benefits should end as of November 24, 2020, and that the DUA should separately adjudicate whether the claimant is in total or partial unemployment as of November 25, 2020.

To be eligible for unemployment benefits, the claimant must show that he is in a state of unemployment within the meaning of the statute. G.L. c. 151A, § 29, authorizes benefits to be paid to those in total or partial unemployment. Those terms are defined by G.L. c. 151A, § 1(r), which provides, in relevant part, as follows:

- (1) "Partial unemployment", an individual shall be deemed to be in partial unemployment if in any week of less than full-time weekly schedule of work he has

earned or has received aggregate remuneration in an amount which is less than the weekly benefit rate to which he would be entitled if totally unemployed during said week

(2) “Total unemployment”, an individual shall be deemed to be in total unemployment in any week in which he performs no wage-earning services whatever, and for which he receives no remuneration, and in which, though capable and available for work, he is unable to obtain any suitable work.

The review examiner initially concluded that the claimant was not medically capable of working, because his doctor would not release him to return to work — even for light duty work — until he completed a cardiac rehabilitation program following heart surgery. *See* Findings of Fact ## 6–10. The review examiner found that the claimant was medically released to return (and actually returned) to work on November 24, 2020. *See* Findings of Fact ## 11–12.

Although the review examiner properly concluded that because the claimant was not medically capable of working, he was not in unemployment as set forth in G.L. c. 151A, §§ 29 and 1(r), her analysis failed to incorporate her finding that the claimant was medically cleared to return to work as of November 24, 2020. Thus, her decision should have ended the claimant’s disqualification as of November 24, 2020. We, therefore, conclude as a matter of law, that the claimant did not meet the capability requirements of G.L. c. 151A, §§ 29(a) and 1(r), from October 4, 2020, through November 24, 2020, because he was not medically capable of performing any work during this period, due to his medical conditions.

We note that during the hearing, the claimant indicated without specificity that he continued to require some medical attention after he returned to work on November 24, 2020; that his employer often offered him a decreased workload due to the COVID-19 pandemic; and that he reported the wages he earned when he certified for partial unemployment benefits, during this time. Thus, we ask that the DUA open and investigate the claimant’s eligibility for benefits as of November 25, 2020, under G.L. c. 151A, §§ 29(a), 29(b), and 1(r).

The review examiner's decision is affirmed in part and reversed in part. The claimant is denied benefits from October 4, 2020, through November 23, 2020. An end date of November 23, 2020, will be put on the issue. The claimant's eligibility for benefits as of November 24, 2020, will be adjudicated separately by the DUA.

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 18, 2021



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

Member Charlene A. Stawicki, Esq. did not participate in this decision.

If this decision disqualifies the claimant from receiving regular unemployment benefits, the claimant may be eligible to apply for Pandemic Unemployment Benefits (PUA). The claimant may contact the PUA call center at (877) 626-6800 and ask to speak to a Tier 2 PUA Supervisor.

**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 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.

JPCA/rh