

The claimant was not in unemployment within the meaning of G.L. c. 151A, §§ 29 and 1(r), while on a medical leave of absence, because she was not capable of performing any work during this period of time.

**Board of Review
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Issue ID: 0060 3392 21

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 13, 2020. On May 15, 2021, the agency determined that the claimant was not entitled to benefits beginning on August 2, 2020, pursuant to G.L. c. 151A, §§ 29(a) and 1(r), as she was on an indefinite medical leave of absence. 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 June 29, 2021. However, the review examiner implemented an end date of January 2, 2021, to the disqualification. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not in unemployment while on a medical leave of absence and, thus, was disqualified under G.L. c. 151A, §§ 29(a) and 1(r). 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 and availability for other work while on leave. Both parties participated in the remand hearings. 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 in unemployment while on a medical leave of absence, because she was not capable of working, 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 works as a Letter Carrier for the employer, the [Employer A].

2. The claimant's regular job duties were setting up her routes and picking up and delivering express mail.
3. The claimant began working for the employer December 1, 2014.
4. The claimant works a full-time schedule of hours for the instant employer.
5. The claimant is still employed with the instant employer.
6. In May 2020, the claimant was in the employer's postal vehicle and was rear-ended. The claimant reported the accident to her employer.
7. The claimant did not go out on a leave of absence for her injury until August 6, 2020.
8. The claimant's doctor told the claimant that she was unable to work this job or perform any work.
9. The claimant was not able to perform work not involving her regular duties.
10. The claimant did not ask the employer if it had other work available.
11. The claimant failed to submit the requested doctor's letters.
12. The claimant's physical therapy appointments lasted 2.5 hours and she went twice per week.
13. The claimant does not recall if she had any other medical appointments.
14. The claimant's left lumbar was swollen.
15. The claimant applied for worker's compensation from the employer.
16. On or about January 3, 2021, the claimant's doctor medically released the claimant to return to work.
17. The clamant [sic] returned to work on January 4, 2021.
18. In January 2021, the claimant received approximately \$13,000 via direct deposit (after taxes) from worker's compensation.
19. The claimant does not remember the exact worker's compensation payments.
20. The claimant does not remember what dates the worker's compensation payments covered.

21. The claimant does not remember if her worker's compensation payments were for total temporary disability or partial temporary disability.
22. The claimant failed to submit her worker's compensation documents as requested.
23. The claimant's August 2020 leave of absence was not related to COVID-19 at all.
24. The employer did not require the claimant to take the leave.
25. The claimant filed for unemployment benefits and received an effective date of December 13, 2020.

Ruling of the Board

In accordance with our statutory obligation, we review the record before us 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. Furthermore, as discussed more fully below, we believe that the review examiner's consolidated findings of fact support the original conclusion that the claimant was not in unemployment while she was out on a medical leave of absence.

The issue before the Board is whether the claimant was in unemployment within the meaning of the Massachusetts Unemployment Insurance statute. Consequently, we analyze the claimant's eligibility for benefits under G.L. c. 151A, § 29, which authorizes benefits be paid only to those in "total unemployment" or "partial unemployment." These terms are in turn 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 claimant took a medical leave of absence from the employer between August 6, 2020, and January 3, 2021, due to the lingering effects of an injury that she suffered while at work a few months prior. *See Consolidated Findings ## 6, 7, 16 and 17.* The review examiner originally denied benefits to the claimant for the duration of her leave of absence after concluding that the claimant was not in unemployment, as she was not capable of performing any work during her

leave. However, during the initial hearing, the claimant appeared to indicate that she was capable of performing work other than her regular job duties with the employer. Accordingly, we remanded the case to obtain additional evidence pertaining to the claimant's capability and availability for other work.

An employee is not disqualified from receiving benefits if she is temporarily disabled from doing the employer's work while capable of and available to do other work and making serious efforts to find other work. *See Dir. of Division of Employment Security v. Fitzgerald*, 382 Mass. 163–164 (1980). After hearing the claimant's testimony during the remand hearing and reviewing the totality of the evidence in the record, the review examiner once again found that the claimant was not capable of performing other work during her medical leave of absence. *See Consolidated Finding # 9*. She had removed herself from the labor force.

We, therefore, conclude as a matter of law that the claimant was not in unemployment within the meaning of G.L. c. 151A, §§ 29 and 1(r), while on her medical leave of absence.

The review examiner's decision is affirmed. The claimant is denied benefits between the weeks ending August 8, 2020, and January 2, 2021.

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 30, 2021



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
(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.