

The claimant did not present any medical documentation to establish that he was capable of, and available for, work since the effective date of his claim, and was therefore ineligible for benefits under G.L. c. 151A, § 24(b). However, during the period when the claimant was not capable of any work, he was eligible for three weeks of benefits pursuant to G.L. c. 151A, § 24(c).

**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: 0062 9911 31

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 the DUA, effective April 26, 2020. On March 17, 2021, the agency issued a Notice of Disqualification under G.L. c. 151A, § 24(b), which indefinitely disqualified the claimant beginning on April 26, 2020. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, the review examiner affirmed the agency's determination in a decision rendered on February 26, 2022. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was incapable of working since April 26, 2020, due to illness, and, thus, was disqualified under G.L. c. 151A, § 24(b). 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's illnesses and medication side effects have rendered him incapable of working, 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. The claimant worked full-time as a doorman at a hotel, until he separated from employment.
2. In April 2020, the claimant was furloughed from his job because of the COVID-19 pandemic.

3. At the end of April, 2020, or early May, 2020, the claimant was psychotic, and experienced psychotic episodes throughout the summer of 2020.
4. In July, 2020, the claimant's employer recalled him to work, but the claimant was psychotic and did not respond to the employer's recall.
5. In September 2020, the claimant was hospitalized for 22 days because he was delusional and experiencing hallucinations.
6. The claimant has a diagnosis of bipolar disorder and major depressive disorder.
7. The claimant is prescribed medications that cause him to become lethargic and confused and cause him to be unable to work on a consistent basis.
8. The claimant filed an unemployment claim with an effective date of April 26, 2020.
9. Since the end of April 2020, the claimant has not been capable of working due to his illnesses and medications.
10. The claimant has been searching for full-time work as a doorman.

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 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 findings of fact and deems them to be supported by substantial and credible evidence. As discussed more fully below, while we concur with the review examiner's conclusion that the claimant has been incapable of working since April 2020, we believe he is eligible to receive three weeks of benefits.

At issue in this case is the claimant's eligibility under 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 the law, the claimant bears the burden of proving that he is able, available for, and actively seeking employment.¹

¹ The claimant's work search efforts are not at issue here. However, in accordance with federal guidance relating to the COVID-19 public health emergency, effective November 2, 2020, the DUA had waived "work search requirements until such time as the COVID-19 emergency measures have been lifted." DUA UI Policy and Performance (UIPP) Memorandum 2020.15 (Nov. 25, 2020), p. 2. This temporary policy was in effect from March 8, 2020, until June 14, 2021. UIPP Memorandum 2021.04 (May 20, 2021), p. 2.

In her decision, the review examiner applied G.L. c. 151A, § 24(b), in a straightforward manner. She reasoned that, since the claimant was not capable of working since April 26, 2020, the claimant was not eligible for benefits under the statute. Finding of Fact # 9 establishes that the claimant has been unable to work due to his illnesses and medications. The record does not contain any suggestion to the contrary. As a result, the evidence presented does not demonstrate that the claimant has been capable of working since April 26, 2020.

However, we must also consider G.L. c. 151A, § 24(c), which states:

No individual shall be considered ineligible for benefits because of failure to comply with the provisions of said clause (b) if such failure is due to an illness or disability which occurs during a period of unemployment after he has filed a claim and registered for work, and has been determined to be otherwise eligible; provided that no work which would have been considered suitable but for such illness or disability was offered to him after he became ill or disabled; provided further, that the exception granted under this paragraph shall apply to three weeks only within a benefit year.

Pursuant to this paragraph, the claimant may still be eligible for benefits for up to three weeks if: (1) he was not able to work, available for work, or actively looking for work due to an illness; (2) he was not offered any suitable work; and (3) he is otherwise eligible for benefits.

As noted above, the review examiner found that the claimant was unable to work at all since April, 2020. The findings do not indicate that the claimant was available for work, or that he was offered any work at any time.

We also note that there is no indication in DUA's electronic record-keeping system, UI Online, that the claimant had been disqualified for benefits pursuant to any other provision of the law. Based on the information presented, the claimant was otherwise eligible for benefits. Consequently, the claimant was eligible for the three weeks of benefits while he was unable to work for medical reasons.

We, therefore, conclude as a matter of law that the claimant has not shown that he is able and available to work from April 26, 2020, as required under G.L. c. 151A, § 24(b). We further conclude that, pursuant to G.L. c. 151A, § 24(c), the claimant is entitled to three weeks of benefits due to illness.

As such, the claimant's work search requirement under G.L. c. 151A, § 24(b), was waived from the beginning of his claim, effective the week beginning April 26, 2020, until the week ending June 12, 2021. As of the week beginning June 13, 2021, the claimant has been obligated to actively search for new employment.

The review examiner's decision is affirmed in part and reversed in part. The claimant is entitled to three illness weeks of benefits for the weeks beginning April 26, 2020², May 3, 2020, and May 10, 2020. The claimant is denied benefits beginning the week May 17, 2020, and for subsequent weeks, until he meets the requirements of G.L. c. 151A.

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 27, 2022



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.

JMO/th

² Ordinarily, a claimant would not be eligible for an illness week benefit during the first week of a claim pursuant to G.L. c. 151A, § 23(a). However, this wait week was temporarily waived during the State of Emergency declared due to the COVID-19 public health emergency, from March 10, 2020 until September 11, 2021, allowing the claimant to be paid during the first week of his claim.