

**Because the claimant was not capable of performing any type of suitable work during a portion of her medical leave of absence, she was not in a state of unemployment within the meaning of G.L. c. 151A, §§ 29(a) and 1(r). She was ineligible for benefits until she became capable of, available for, and actively seeking work.**

**Board of Review  
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Member  
Michael J. Albano  
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**Issue ID: 0069 1057 14**

### 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 went on a medical leave of absence from the employer on April 9, 2021. She filed a claim for unemployment benefits with the DUA, with an effective date of May 2, 2021, which was denied in a determination issued on July 30, 2021. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on October 22, 2022. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not capable of performing any type of work and, thus, was disqualified under G.L. c. 151A, §§ 29(a), 29(b), 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 regarding the claimant's unemployment status. Both parties attended the remand hearing. Thereafter, the review examiner issued his 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 a state of unemployment while on a leave of absence because the claimant was medically unable to perform any type of work, 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 filed this claim for unemployment insurance benefits with an effective date of May 2, 2021.

2. The claimant worked as a part-time crew member for the employer from early March of 2021 until her separation on April 9, 2021.
3. The employer is a computer sales and service business with an internet café.
4. On or about April 9, 2021, the claimant requested a leave of absence on advice of her doctor due to complications with her pregnancy and subsequent miscarriage.
5. The employer allowed the leave commencing April 9, 2021, with no specific date upon which to return to work.
6. From April 9, 2021, to June 8, 2021, the claimant was under medical care.
7. On June 8, 2021, the claimant's medical provider anticipated the claimant would be capable of returning to work in 8 weeks.
8. The claimant did not see a medical provider after June 8, 2021, to obtain a further medical release.
9. As of August 3, 2021, the claimant was capable of working without restrictions.
10. As of August 3, 2021, the claimant was capable of performing her usual job as a part-time crew member.
11. On August 12, 2021, the claimant contacted the employer and informed the owner that she was available to return to work.
12. On August 12, 2021, the employer did not have work available for the claimant because the position had been filled while the claimant was on the leave of absence.
13. On October 7, 2021, the employer had work available for the claimant.
14. On October 7, 2021, the claimant returned to work as a part-time crew member.
15. Between September 1, 2021, and October 9, 2021, the claimant was capable of working.
16. Between September 1, 2021, and October 9, 2021, the claimant was available for work.
17. The claimant conducted job searches at least 4 times per week after August 3, 2021.
18. The claimant's job searches were internet searches and on-line applications with other employers.

19. The claimant submitted a Health Care Provider's Statement of Capability dated June 8, 2021, as completed by her medical provider.
20. The claimant produced paystubs from the employer for the week ending April 9, 2021, and October 22, 2021.
21. The claimant produced work search logs from July 4, 2021, to August 14, 2021.
22. The claimant did not exchange any written correspondence or communications with the employer during the leave of absence concerning the claimant's capability of performing work.

### 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 disagree that the claimant is ineligible for benefits during the entire period on appeal.

G.L. c. 151A, § 29, 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; provided, however, that certain earnings as specified in paragraph (b) of section twenty-nine shall be disregarded. . . .

(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.

Read together, the statutory provisions cited above under G.L. c. 151A, §§ 1(r) and 29, reflect the Legislature's expectation that an unemployed worker will only be eligible for benefits if she is capable of, available for, and actively seeking full-time work.

Upon the advice of her medical provider, the claimant took a leave of absence from the employer on April 9, 2021, due to pregnancy complications and a subsequent miscarriage. *See Consolidate Findings ## 4 and 5.* She remained under the care of her medical provider from April 9, 2021, until June 8, 2021, when her medical provider anticipated that she would be capable of returning to work in eight weeks' time. *See Consolidate Findings ## 6 and 7.* Presumably on this basis, the

review examiner found that, as of August 3, 2021, the claimant was physically and mentally able to return to work. *See Consolidated Findings ## 9 and 10.* We can infer from these findings that the claimant was not capable of performing any type of work while she was on a medical leave of absence until August 3, 2021.

However, because the findings further reflect that, as of the week of August 3, 2021, the claimant was capable of, available for and actively seeking work, she was in unemployment within the meaning of the statute from this point forward. *See Consolidated Findings ## 9, 10, 17 and 18.*

We, therefore, conclude as a matter of law that the claimant was not in unemployment pursuant to G.L. c. 151A, §§ 29(a) and 1(r), only during her medical leave of absence from April 9, 2021, through August 3, 2021.

The review examiner's decision is affirmed in part and reversed in part. The claimant is not entitled to receive benefits from the week ending April 17, 2021, through July 31, 2021. The claimant is entitled to receive benefits as of the week ending August 7, 2021, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - September 15, 2023**



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](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.

DY/rh