

**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: 0069 5076 61

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 the claimant benefits under his 2021-01 claim. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On July 8, 2021, the agency initially determined that the claimant was not entitled to unemployment benefits, beginning May 16, 2021. The claimant appealed and attended the hearing. In a decision rendered on October 1, 2021, the review examiner affirmed the agency determination, concluding that the claimant was unable to perform any work and, thus, he was disqualified under G.L. c. 151A, § 24(b). The Board accepted the claimant's application for review.

Ruling of the Board

After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we conclude that the review examiner's decision is based on substantial evidence and is free from any error of law affecting substantive rights. G.L. c. 151A, § 24(b), requires, as a condition for receiving unemployment benefits, that the claimant demonstrate that he is able, available, and actively seeking some type of suitable work. In this case, all of the evidence, including medical letters and the claimant's testimony, confirm that, since his leg was amputated on April 21, 2021, he has not been capable of performing any work.

In rendering our decision, we decline to accept Finding of Fact # 11, which states, "[o]n or about December 27, 2020, the claimant's doctor medically released the claimant to work again." There is nothing in the record to support this finding and it contradicts the other findings of fact. We assume it was an error.

The review examiner's decision is affirmed. The claimant is denied benefits for the week beginning May 16, 2021, and for subsequent weeks until such time as he meets the requirements of G.L. c. 151A, § 24(b).

BOSTON, MASSACHUSETTS
DATE OF DECISION - January 28, 2022



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

Member Charlene A. Stawicki, Esq. 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.

AB/rh