

**The claimant separated from her employer to provide full-time care for her mother. While providing full-time care, she was ineligible for benefits because she was not available for any work. However, when her mother’s health improved, the claimant became available for, and began searching for, part time work. Because she had to limit her availability to part-time work for the same reason that DUA determined to be an urgent, compelling, and necessitous reason to leave her employer, she is not disqualified from receiving benefits while limiting her availability to part-time work.**

**Board of Review  
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Member  
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Member**

**Issue ID: 0070 4710 17**

### 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, effective April 25, 2021, which was denied in a determination issued on August 19, 2021. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by the claimant, the review examiner affirmed the agency’s initial determination and denied benefits in a decision rendered on November 10, 2021. We accepted the claimant’s application for review.

Benefits were denied after the review examiner determined that the claimant was not available for work while on a leave of absence, and, thus, she 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 was not available for any work during the period on appeal because she was providing care for her mother, 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’s appeal is from a determination which she was denied benefits under Section 24(b) of the Law for the period beginning 4/25/2021 and for an indefinite period thereafter. The reason provided for the disqualification was due to the claimant not being available for work due to the need to care for a family member.

2. Effective 4/25/2021, the claimant separated from her employment to provide care for her mother.
3. The claimant's mother was ill with various medical conditions which required the claimant to move in with her mother and provide all daily care.
4. The claimant is not available for work while caring for her mother.
5. The claimant's mother's health has been improving and the claimant hopes to return to full-time work in the near future.
6. In late August through September, the claimant's mother's health had improved, and she [had] been seeking part-time employment while still caring for her mother.
7. The claimant is only seeking part-time employment and not available for full-time employment until approximately the beginning of January 1, 2022.
8. The claimant anticipates that her mother's health will have improved enough for her to return to work full-time.

### 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. After such review, the Board adopts the review examiner's findings of fact except as follows. We reject Finding of Fact # 4 as internally inconsistent with the other findings of fact and contrary to the evidence of record. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant was not available for work within the meaning of the law during the entire period on appeal.

At issue in this appeal is whether the claimant met the requirements of 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. . . .

The review examiner disqualified the claimant indefinitely from April 25, 2021, the effective date of her claim, on the grounds that she failed to show that she was available for any work after that date. Upon review of the record, we believe that the evidence shows the claimant was not available for any work from April 25, 2021, through August 28, 2021. *See Findings of Fact ## 2, 3, and 4.* She, therefore, did not meet the requirements of G.L. c. 151A, § 24(b), during that period.

However, the review examiner also found that claimant began seeking part-time work at the end of August, 2021, when her mother's condition had begun to improve. Finding of Fact # 7.

Although not specifically stated in G.L. c. 151A, § 24(b), other provisions of the Massachusetts Unemployment Statute show that unemployment benefits are intended to assist claimants seek and return to *full-time* work. *See, e.g.*, G.L. c. 151A, §§ 29 and 1(r), which provide for the payment of benefits only to those who are unable to secure a full-time weekly schedule of work. There are a limited number of circumstances, set forth under 430 CMR 4.45, when claimants are permitted to restrict their availability to part-time work. In relevant part, these regulations state as follows:

(1) An individual otherwise eligible for benefits may limit his/her availability for work during the benefit year to part-time employment provided, that the individual . . .

(b) establishes to the satisfaction of the commissioner that the reasons for leaving his or her employment were for such an urgent, compelling, and necessitous nature as to make his or her separation involuntary; and establishes to the satisfaction of the commissioner that the same or related urgent, compelling, and necessitous reasons require the individual to limit availability for work during the benefit year to part-time employment; and such limitation does not effectively remove the individual from the labor force. . . .

The claimant separated from her previous employer because her mother was ill and required the claimant's full-time care. Findings of Fact ## 2 and 3. Accordingly, the DUA determined in Issue ID # 0069 1505 76 that the claimant was eligible for benefits, because she separated from her previous employer for urgent, compelling, and necessitous reasons.

At the end of August, 2021, the claimant's mother's health improved to the point that the claimant no longer needed to provide full-time care and, consequently, the claimant began searching for part-time work. Findings of Fact ## 6 and 7. While the claimant's continued caregiving responsibilities precluded her from returning to full-time work, the fact that she began searching for part-time work demonstrates that this limitation did not remove the claimant from the labor force. *See* Finding of Fact # 7. Moreover, these findings show that the claimant had to limit her availability to part-time work for the same urgent, compelling, and necessitous reason that caused her separation from her previous employer. Therefore, pursuant to 430 CMR 4.45(1)(b), the claimant may not be disqualified after August 28, 2021, on the grounds that she was only available for part-time work.

We, therefore, conclude as a matter of law that the claimant has met her burden to show that she met the requirement to be capable of, available, and actively seeking work within the meaning of G.L. c. 151A, § 24(b) as of August 29, 2021.

The review examiner's decision is affirmed in part and reversed in part. The claimant is denied benefits from April 25, 2021, through August 28, 2021. The claimant is entitled to receive benefits for the week beginning August 29, 2021, and for subsequent weeks if otherwise eligible.



Charlene A. Stawicki, Esq.  
Member

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - December 30, 2021**



Michael J. Albano  
Member

Chairman Paul T. Fitzgerald, 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](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.

LSW/rh