

**Complications from claimant’s Type I Diabetes diagnosis render him unable to work full-time, but he has demonstrated that he is a qualified individual with a disability and may limit his availability to part-time employment under 430 CMR 4.45(3) and (4). Thus, he is eligible for benefits under G.L. c. 151A, § 24(b).**

**Board of Review  
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**Issue ID: 0070 6520 52**

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 reverse.

The claimant separated from his most recent employer on March 16, 2020. He filed a claim for unemployment benefits with the DUA, which denied him benefits from June 13, 2021, through September 4, 2021. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended the claimant, the review examiner affirmed the agency’s initial determination and denied benefits in a decision rendered on June 14, 2022. We accepted the claimant’s application for review.

Benefits were denied after the review examiner determined that the claimant was not capable of working full-time, 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 was disqualified from receiving any benefits under G.L. c. 151A, § 24(b), because his medical condition rendered him incapable of performing full-time work, 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 opened an unemployment claim having an effective date of 5/30/21.
2. The claimant was employed as a kitchen worker at a bowling alley from the [fall] of 2019 to March 2020 when he was laid off due to the [COVID-19] pandemic.

3. The claimant developed medical issues beginning in March 2020 that prevented him from working in any capacity for approximately 1 year. Beginning in June 2021, the claimant's health had improved sufficiently so that he was able to work part-time. He began searching for part-time work in June 2021. The claimant continued to search for part-time work throughout 2021.
4. The claimant began working part-time as a safety/emissions technician performing inspections at a garage on February 24, 2022.
5. On 2/15/22, the DUA issued a Notice of Disqualification to the claimant, determining the claimant did not meet the capability requirements of the Law and therefore was disqualified for the period beginning 6/13/21 to 9/4/21.
6. The claimant appealed that [notice].

### 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. However, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant is ineligible for benefits.

The question we must decide in this case is whether the claimant met the eligibility requirements under G.L. c. 151A, § 24(b), which provides, in relevant 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 . . . .

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. Because the claimant has only been capable of performing part-time work and seeking part-time work, the review examiner's original decision denied him benefits. *See* Finding of Fact # 3.

However, there are a limited number of circumstances, set forth under the DUA regulations at 430 CMR 4.45, that permit a claimant to restrict his availability to part-time work. In relevant part, these regulations state as follows:

- (3) . . . [A]n otherwise eligible individual . . . may limit his/her availability for work during the benefit year to part-time employment provided, that the individual is:
  - (a) a qualified individual with a disability;

(b) provides documentation to the satisfaction of the commissioner substantiating an inability to work full-time because of such disability; and  
(c) establishes to the satisfaction of the commissioner that such limitation does not effectively remove himself/herself from the labor force.

(4) Any individual who meets the requirements of either 430 CMR 4.45(1) or (3) must be actively seeking and available for suitable work to be eligible for benefits. An offer of employment will not be considered an offer of suitable employment and the individual will not be disqualified for refusing such offer where such offer: . . .

(b) in the case of an individual who meets the requirements of 430 CMR 4.45(3) requires greater hours than the individual is capable of working.

We believe the claimant meets the criteria under 430 CMR 4.45(3) and (4) to limit his availability to part-time employment.

The record shows that the claimant is a qualified individual with a disability, defined under the regulations at 430 CMR 4.44 as including a physical impairment that substantially limits a major life activity, such as working. *See* Finding of Fact # 3 and Exhibit 1.<sup>1</sup> The claimant has provided the DUA with documents from his treating physician stating that his medical condition, which arises from complications due to Type I Diabetes, limits his ability to work to part-time employment. *See* Exhibits 2 and 5.<sup>2</sup> In Exhibit 2, the claimant's physician indicated that the claimant could likely perform remote customer service work and other work-from-home jobs, because he would be able to take rest breaks as needed. Finally, the findings show that the claimant has been actively seeking suitable part-time employment since June, 2021, and that he began working part-time as of February 23, 2022, which is consistent with his weekly certifications and fact-finding responses. *See* Findings of Fact ## 3-4 and Exhibits 3-4, 6-8, 10-11.

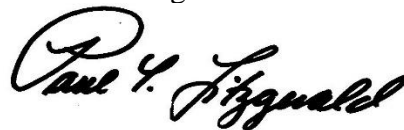
Under these circumstances, the claimant has demonstrated that he is a qualified individual with a disability that renders him incapable of working full-time, but that his limitation does not effectively remove him from the labor force. He has also shown that he is available for and actively seeking suitable work. We, therefore, conclude as a matter of law that the claimant may not be disqualified under G.L. c. 151A, § 24(b), due to his inability to work full-time.

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<sup>1</sup> Exhibit 1 is a completed DUA Health Care Provider's Statement of Capability from the claimant's physician. Although not explicitly incorporated into the review examiner's findings, the contents are part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. *See* Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

<sup>2</sup> Exhibits 2 and 5 are progress notes from the claimant's physician. As with Exhibit 1, these documents are not explicitly incorporated into the review examiner's findings. However, the contents are also part of the unchallenged evidence introduced at the hearing.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning June 13, 2021, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.  
Chairman

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - August 19, 2022**



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](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.

JMO/th