

Both the demands of caring for family members and her own health problems rendered the claimant unable and unavailable for any work during the single week on appeal. Because she had removed herself from the labor force, the claimant was not eligible for unemployment benefits pursuant to G.L. c. 151A, § 24(b).

**Board of Review
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Issue ID: 0072 3212 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 unemployment benefits for the single week beginning August 15, 2021. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm.

The claimant separated from her employment and filed a claim for unemployment benefits with the DUA, effective July 18, 2021. In a determination issued on October 7, 2021, the DUA denied benefits for the week August 15 – August 21, 2021. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, the review examiner affirmed the agency’s initial determination and denied benefits for that week in a decision rendered on June 10, 2022. We accepted the claimant’s application for review.

Benefits were denied after the review examiner determined that the claimant was not able, available for, or actively seeking work and, thus, she was disqualified under G.L. c. 151A, § 24(b) for the week of August 15, 2021. 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 clarify the claimant’s ability and availability for full- or part-time work during the week of August 15, 2021.¹ The claimant 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 had not been capable of, available for, or actively seeking employment during the week beginning August 15, 2021, due to having to care for family members and her own health issues, 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 Board also stated that it remanded the case because the review examiner had failed to administer an oath to the witnesses at the original hearing. This was an error. Inasmuch as the oath was properly administered, all testimony from both the original and remand hearing is part of the record.

1. The claimant filed a claim on July 22, 2021, for unemployment benefits with an effective date of 7/18/21 after she left her job as a florist/cashier.
2. The claimant was on medical leave from April 2021 through July 3, 2021, due to her mother being hospitalized for cancer.
3. The claimant separated from her prior employer because she had to care for her brother and mother and due to her own health issues.
4. The claimant suffered from health issues with her kidneys and suffers from anxiety and depression due to the stress of caring for her brother and mother.
5. On July 26, 2021, the claimant was screened for cancer, and the results were negative, but because of the claimant's own health issues with depression and anxiety, she was not medically cleared to return to work.
6. The claimant does not take medications for her condition because they make her feel drowsy.
7. During the week beginning August 15, 2021, the claimant was not available for full-time work. The claimant was caring for her mother, who has been diagnosed with stage four cancer. Watching for [sic] her was an everyday task because she had to take her to her doctor's appointments for chemotherapy and radiation therapy. The claimant also performs daily tasks such as bathing her mother, doing laundry, and her groceries.
8. The claimant also cares for her autistic brother. She performs everyday tasks for her brother, such as providing his medications, doing his laundry, and taking him to his therapist and psychiatrist. He sees his therapist once a week and his psychiatrist twice a month.
9. During the week beginning August 15, 2021, the claimant did not look for full-time work because she was busy caring for her family.
10. During the week beginning August 15, 2021, the claimant looked for part-time work at a retail store. The claimant looked for part-time work because she was not available to work full-time hours due to caring for her family.
11. On September 15, 2021, the claimant's mother's healthcare provider completed a Statement of Capability indicating that her mother was returned home from the hospital on hospice care on July 3, 2021.
12. Before September 21, 2021, the claimant was unable to work. Between caring for her mother and brother, she was emotionally stressed out, which prevented her from working full-time.

13. On October 19, 2021, the claimant's mother filed a petition for the resignation of a guardian due to her declining condition. The claimant became her brother's guardian.

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 original conclusion is free from error of law. After such review, the Board adopts the review examiner's consolidated findings of fact except to note as follows. We reject Consolidated Finding # 12 insofar as it indicates that claimant may have been available to work part-time prior to September 21, 2021, because this is contradicted by the claimant's testimony, as explained below. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. After remand, we agree with the review examiner's legal conclusion that the claimant is disqualified from receiving benefits for the week at issue in this appeal.

The relevant section of law on appeal is 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

In his original decision, the review examiner disqualified the claimant because he concluded that, due to the claimant's own medical condition and the tremendous amount of care required for her ill mother and cognitively impaired brother, she was not medically capable of, available for, or actively seeking full-time work during the week of August 15, 2021.

It is true that unemployment benefits are intended to assist individuals to return to full-time work, and, generally, an individual will not be eligible for benefits unless the person is capable of, available for, and actively seeking full-time work.² There are a limited number of circumstances which permit an individual to restrict his or her availability to part-time work. *See* 430 CMR 4.45. However, in the case before us, the claimant testified several times that, because of her health and the demands of caring for her family in August, 2021, she was unable and unavailable for *any* hours of work.³ Because she had effectively removed herself from the labor force, she was not eligible for unemployment benefits.

² *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.

³ At the remand hearing, the review examiner asked the claimant how many hours she was available to work during the week beginning August 15, 2021; she responded, "zero." She further testified that she has not been able to work since she left her job on July 3, 2021. While not explicitly incorporated into the review examiner's findings, this part of the claimant's testimony is 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).

We, therefore, conclude as a matter of law that the claimant has failed to meet the eligibility requirements to be capable of, available for, and actively seeking work within the meaning of G.L. c. 151A, § 24(b).

The review examiner's decision is affirmed. The claimant is denied benefits for the week August 15 – 21, 2021.

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 30, 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/jv