

**Pursuant to G.L. c. 151A, § 24(b), the claimant was ineligible for benefits during the portion of his leave of absence following surgery, when he was unable to work at all. Later, when he limited his availability to part-time hours for a reason that relates to the urgent, compelling, and necessitous medical reason for taking the leave, and subsequently, when he was available for full-time employment, he met the eligibility requirements under § 24(b). However, once he started receiving SSDI payments and limited his availability to part-time work only so as not to jeopardize the disability benefits, he was no longer entitled to unemployment benefits.**

**Board of Review  
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**Issue ID: 0073 2933 37**

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 with the DUA, effective March 15, 2020, which was initially approved. However, in a determination issued on October 20, 2021, the claimant was disqualified beginning October 25, 2020. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, the review examiner modified the agency's initial determination and denied benefits beginning October 24, 2021, in a decision rendered on May 25, 2022. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not available for full-time work and, thus, he was disqualified under G.L. c. 151A, § 24(b). 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 more evidence about the claimant's ability to work full- or part-time during a larger period than the review examiner had considered. After the remand hearing, 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 ineligible for benefits because he was not available for full-time work, is supported by substantial and credible evidence and is free from error of law, where, after remand, the record shows that, for certain periods, the claimant was available for full- or part-time work.

Findings of Fact

The review examiner's consolidated findings of fact are set forth below in their entirety:

1. The claimant filed a claim for unemployment insurance benefits with an effective date of 3/15/2020.
2. Prior to filing his claim, the claimant worked full-time as a bis [sic] driver, an area he had worked in for about three years. The claimant also had over sixteen years of experience working in the field of health and human services in various roles.
3. On 10/23/2020, the claimant had a staph infection which resulted in amputation of most of his right leg. The claimant required a prosthetic and a stay in an assisted care facility while he recovered from his surgery. Due to further surgeries and hospitalizations, the claimant was not physically able to work until at least January 2021. Since January 2021, the claimant has been physically able to work in a full-time capacity with reasonable accommodations.
4. Since 10/25/2020, the claimant had restrictions on his ability to accept and perform full-time work. After the claimant's surgeries and hospitalizations, the claimant reached a point in which he was physically able to return to work in January 2021. Due to delays in manufacturing his required prosthetic and adaptive equipment, delivery of an appropriate wheelchair, and a delay in receiving proper housing, the claimant was not available to return to full-time work until January 2022.
5. From 10/25/2020 through the end of January 2021, the claimant was not capable of or available for any work.
6. By February 2021, the claimant's right leg was healed.
7. From February 2021 to 6/12/2021, the claimant was physically capable of and available to perform between twenty and thirty hours of work. The claimant could do administrative work, clinical work, and customer service work remotely by telephone or computer. The claimant could fit in twenty to thirty hours of remote work around his physical therapy schedule.
8. Since 6/13/2021, the claimant was capable of and available for full-time remote work as well as some in-person work. The claimant's prosthetic was finalized in June 2021 and the claimant moved into proper housing in August 2021.
9. On 2/23/2022, the claimant began to receive full SSDI benefits. At that point, the claimant began to restrict his availability for any type of work to part-time or half-time in order to refrain from surpassed the ceiling on hours and earnings allowed to qualify for SSDI benefits.
10. In February 2022, the claimant began receiving full SSDI benefits. The claimant then restricted the hours he was available to work to remain eligible for full SSDI benefits.

11. On 3/15/2022, the claimant separated from his employment with his most recent employer.
12. Since February 2021, the claimant did search for work. The claimant searched for various roles within the health and human services industry as well as in academia. The claimant searched for work online and networked with his contacts within those industries at least three times per week.

### 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. 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 with the disqualification period imposed in the review examiner's decision.

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 first question is the relevant period covered by this appeal. In rendering his decision, the review examiner disqualified the claimant indefinitely beginning October 25, 2021, without addressing the full disqualification period imposed by the DUA's initial determination, which began on October 25, 2020. We remanded this case, in part, in order to address the claimant's availability during the entire period, beginning October 25, 2020.

After remand, the consolidated findings provide that, due to a staph infection on October 23, 2020, the resultant amputation of his leg, and the subsequent surgeries and hospitalizations, the claimant was not able to work from October 25, 2020, until the end of January, 2021. *See Consolidated Findings ## 3–5.* His inability to perform any work at all during this period rendered him ineligible for benefits under G.L. c. 151A, § 24(b), as he had removed himself from the labor force.

However, beginning in February, 2021, and continuing until June 12, 2021, the claimant was physically capable of and available for part-time work of between 20–30 hours per week. Consolidated Finding # 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.<sup>1</sup> There are a limited number of circumstances, set forth under 430 CMR

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<sup>1</sup> *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.

4.45, which permit claimants 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. . . .

We believe that the claimant's circumstances allowed him to limit his availability to part-time work during portions of the benefit year pursuant to this regulation.

During the hearing, the claimant referred to being on an unpaid leave of absence from his position as a bus driver during the period before us, until he formally separated on March 15, 2022. *See Consolidated Findings ## 2 and 11.*<sup>2</sup> We note further that, following a hearing in another issue, a different review examiner rendered findings which confirm that, due to his staph infection and numerous surgeries, the claimant had taken a leave of absence beginning October 25, 2020.<sup>3</sup>

“[A] ‘wide variety of personal circumstances’ have been recognized as constituting ‘urgent, compelling and necessitous’ reasons under” G.L. c. 151A, § 25(e), “which may render involuntary a claimant’s departure from work.” Norfolk County Retirement System v. Dir. of Department of Labor and Workforce Development, 66 Mass. App. Ct. 759, 765 (2009), *quoting* Reep v. Comm’r of Department of Employment and Training, 412 Mass. 845, 847 (1992). Medical conditions are recognized as one such reason. *See* Dohoney v. Dir. of Division of Employment Security, 377 Mass. 333, 335336 (1979) (pregnancy or a pregnancy-related disability, not unlike other disabilities, may legitimately require involuntary departure from work). Here, we can reasonably infer that a staph infection serious enough to require amputation constituted an urgent, compelling, and necessitous reason for the claimant to have to take a leave of absence.

Consolidated Finding # 7 provides that the claimant limited his availability to 20–30 part-time hours per week beginning in February, 2021, in order to work around his physical therapy schedule. Again, we can reasonably infer that the physical therapy was rehabilitation connected to his many surgeries. In short, this shows that the claimant had to limit his availability to part-time hours for reasons related to the urgent, compelling, and necessitous medical reason that caused him to stop working for his former employer. On this basis, he may not be disqualified

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<sup>2</sup> We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. *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>3</sup> *See* Review Examiner decision in Issue ID # 0065 7034 05.

from February, 2021, through June 12, 2021, because he was only available for 20–30 hours of work per week.<sup>4</sup>

As for the period from June 13, 2021, until he began collecting SSDI benefits on February 23, 2022, the review examiner found that the claimant was capable of and available for full-time work. Consolidated Finding # 8. Inasmuch as he was able, available for, and actively seeking full-time work, he also met the eligibility requirements under G.L. c. 151A, § 24(b), during this period.

However, starting the week beginning February 20, 2022, the claimant chose to limit his availability to part-time hours solely because he did not want to jeopardize the amount that he received in SSDI benefits. *See* Consolidated Findings ## 9 and 10. This is not among the reasons permitted under 430 CMR 4.45 to limit availability to part-time work. *See* Board of Review Decision 0026 4530 42 (Mar. 28, 2019) (claimant who restricts availability due to receipt of disability benefits is ineligible pursuant to G.L. c. 151A, § 24(b)).

We, therefore, conclude as a matter of law that the claimant satisfied his burden to show that he was able, available for, and actively seeking work, as required under G.L. c. 151A, § 24(b), during those periods when he was available for full-time work, or had restricted his availability to part-time work due to the same reason that he had to take a leave of absence. We further conclude that he is disqualified under this provision during the periods that he was unable to work at all and once he started restricting his availability in order to avoid jeopardizing his SSDI.

The review examiner’s decision is affirmed in part and reversed in part. The claimant is denied benefits from October 25, 2020, through January 30, 2021, and again beginning February 20, 2022, and indefinitely thereafter until he meets the requirement of G.L. c. 151A. He is entitled to benefits for the period from January 31, 2021, until February 19, 2022, if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - February 22, 2023**



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)**

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<sup>4</sup> Since Consolidated Finding # 12 provides that the claimant had been actively searching for work since February, 2021, he has also satisfied the active work search provision under G.L. c. 151A, § 24(b).

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.

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