

**Since the review examiner found that the claimant had recovered from her injuries and was able, available for, and actively seeking work during the week at issue on appeal, she may not be disqualified pursuant to G.L. c. 151A, § 24(b).**

**Board of Review  
19 Staniford St., 4<sup>th</sup> 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: 0076 6602 10**

### 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 her position with the employer on March 23, 2022. She filed a claim for unemployment benefits with the DUA, which was approved. However, in a determination issued on May 17, 2022, the DUA disqualified her beginning May 1, 2022. 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 only during the week beginning May 1, 2022, in a decision rendered on June 17, 2022. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not able to work nor actively seeking work, and, thus, she 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 make a credibility assessment and render subsidiary findings of fact concerning conflicting evidence in the record about the claimant's capability to work. Thereafter, the review examiner reviewed the record and has issued her 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 not capable of performing work during the week beginning May 1, 2022, is supported by substantial and credible evidence and is free from error of law in light of revised consolidated findings which accept the claimant's medical evidence that she was, in fact, capable of working.

### Findings of Fact

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

1. The claimant filed a claim for Unemployment Assistance (UI) benefits with an effective date of 5/1/22.

2. The claimant was employed as a skin care specialist in a laser clinic from 11/3/20 to 3/23/22. She sustained a workplace injury on 9/23/21. On that date, the claimant began a paid leave of absence.
3. The claimant filed a Worker's Compensation claim and received a lump sum settlement in May 2022.
4. On 3/22/22, the claimant's leave ended. The claimant requested that her leave be extended. She provided a doctor's note to her employer stating that she was not able to return to work.
5. The claimant's employment was terminated on 3/23/22 because she was not able to return to work and her employer could not hold her job any longer.
6. In a letter dated 3/26/22, the claimant's doctor stated that the claimant could return to work for light duty only. She was advised to work only 5 hours per day for two weeks. At the end of the two weeks, the claimant was cleared to return to her regular duties and a full-time schedule.
7. The claimant did not ask for light duty work or reduced hours for the two-week period because she had already been terminated.
8. The claimant has been searching for work since the week beginning 4/10/22, after she was cleared to return to work without restrictions. She used online search tools four days per week seeking an administrative or secretarial position because she feared that a return to her former occupation would result in a reinjury to her arms.
9. Since 4/10/22, the claimant has had no physical or mental restrictions on her ability to work.
10. Since 4/1/22, aside from limiting her work search to positions outside of her former occupation, the claimant has placed no additional limitations on her availability.
11. When completing Continued Claims Summaries for the weeks beginning 5/1/22 and 5/8/22, the claimant indicated that she was able and available to work and was actively seeking full-time employment during both of those weeks.
12. In a Healthcare Provider's Statement dated 5/5/22, the claimant's doctor cleared her to return to work full-time without restrictions as of 4/11/22.
13. On 5/5/22, DUA issued a Questionnaire to the claimant requesting information about her ability to work during the week beginning 5/1/22. In her responses, the claimant stated that she was not able to work that week because she had not

been cleared to return to work by her doctor. She stated that she expected to be able to return to work on 7/1/22. She further stated that she did not search for work that week. The claimant provided these answers in error.

14. On 5/17/22, 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 5/1/22 and indefinitely thereafter.

#### Credibility Assessment:

Although the claimant's fact-finding questionnaire indicated that the claimant was neither able to work nor seeking work, she credibly testified that she was confused when completing such questionnaire. In support of this, the doctors' notes provided by the claimant support her assertion that she has had no restrictions on her capability since 4/11/22. Furthermore, the claimant's testimony regarding her work search (when combined with her answers in the Continued Claims summaries) is also accepted as credible.

#### 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. We further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented. However, based upon these consolidated findings, we reject the review examiner's legal conclusion that the claimant was ineligible for benefits, as outlined below.

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. . . .

Based upon the claimant's conflicting statements to the DUA, the review examiner had originally concluded that the claimant was not capable of working during the single week at issue in this appeal, the week beginning May 1, 2022. Because evidence from the claimant's own medical providers indicated otherwise, we remanded this case for the review examiner to consider the claimant's ability to work in light of the entire record. After remand, the consolidated findings now provide that the claimant had been physically cleared to return to full-time work without limitations since April 10, 2022. *See Consolidated Findings ## 6 and 9.*

Other than avoiding the single line of work that caused her injuries, the claimant has also not limited her availability to work since April, 2022. *See Consolidated Findings ## 10 and 11.* Since

the review examiner further found that the claimant has been actively searching for work since April 10, 2022, the claimant has met her burden to show that she was able, available, and actively searching for work during the week beginning May 1, 2022. *See Consolidated Finding # 8.*

We, therefore, conclude as a matter of law that that the claimant has satisfied the eligibility requirements under G.L. c. 151A, § 24(b).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning May 1, 2022, if otherwise eligible.



Charlene A. Stawicki, Esq.  
Member

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - February 28, 2023**



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.

AB/rh