

The claimant was unable to work full-time during the summer of 2022 because he had to provide childcare for his son. However, he was able to work a regular, full-time schedule once his son returned to school at the end of August 2022. In the absence of any indication the claimant limited himself to part-time work after his son returned to school, Board held he met the requirements of G.L. c. 151A, § 24(b), and was, therefore, eligible for benefits beginning August 29, 2022.

**Board of Review
19 Staniford St., 4th 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: 0077 4815 78

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, which was denied in a determination issued on July 13, 2022. The claimant appealed this determination to the DUA hearings department. Following a hearing on the merits, attended by the claimant, the review examiner affirmed the agency's determination and denied benefits a decision rendered on August 17, 2022. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not capable of, available for, and actively seeking suitable work 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 did not meet the eligibility requirements because he was only available for and searching for part-time work due to a lack of childcare, 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 filed a new claim for unemployment benefits effective 06/19/2022.
2. Prior to separating from employment, the claimant worked approximately thirty (30) hours per week as a personal care attendant.

3. In May of 2022, the client who the claimant worked for, required full time care and the claimant was unable to provide full time care as he lacks childcare for his nine-year-old son.
4. During the period beginning 07/03/2022 and for the weeks thereafter, the claimant did not have any medical conditions or restrictions preventing him from working full-time.
5. During the period beginning 07/03/2022, and for the weeks thereafter, the claimant was not available to work full-time as he did not have childcare for his son.
6. During the period beginning 07/03/2022, and for the weeks thereafter, the claimant searched for part time driving and delivery jobs three (3) times [per week] and kept a work search log.
7. On a Fact-Finding Questionnaire (the Questionnaire) dated 07/27/2022, the claimant indicated that he was only available to work a couple of hours a week.
8. The claimant can only work part time until his son goes back to school on 08/29/2022.

Ruling of the Board

In accordance with our statutory obligation, we review 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 ultimate 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 reject the review examiner's legal conclusion that the claimant was not entitled to benefits for the entire period on appeal.

In order to be eligible for unemployment benefits, a claimant must be capable of, available for, and actively seeking work for each week in which benefits are claimed. This requirement is taken from 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

Under this section of law, the burden of proof is on the claimant. *See Evancho v. Dir. of the Division of Employment Security, 375 Mass. 280, 282–283 (1978)* (“the burden rests on the unemployed person to show that his continued unemployment is not due to his own lack of diligence”). If the claimant fails to show that he meets any one of the three requirements described in G.L. c. 151A, § 24(b), he is disqualified from receiving benefits until such time as he meets all of the requirements.

At the hearing, the claimant testified that he became available for full-time work around June 22, 2022. However, the review examiner rejected this testimony as not credible based on the contemporaneous fact-finding questionnaires that the claimant submitted during the pendency of his claim. Such assessments are within the scope of the fact finder's role, and, unless they are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. *See School Committee of Brockton v. Massachusetts Commission Against Discrimination*, 423 Mass. 7, 15 (1996). Upon review of the record, we accept the review examiner's credibility assessment as being supported by a reasonable view of the evidence.

While the claimant remained available for some part-time work during the period between June 19, 2022, the effective date of his claim, and August 28, 2022, the record indicates that he was not available to work the same 30-hour schedule as he had worked prior to filing for benefits. *See Findings of Fact ## 5, 7, and 8.* He, therefore, did not meet the eligibility conditions for limiting his availability pursuant to 430 CMR 4.45.

However, the review examiner found that the claimant no longer had the same restrictions on his availability as of August 29, 2022, when his son's school reopened. Finding of Fact # 8. While the claimant conducted three work search activities each week throughout the entire period on appeal, he was forced to limit his searches to part-time work until his son returned to school. Findings of Fact ## 6 and 8. Once he became available to work full-time at the end of August, there is no indication from the record that he chose to continue to limit his work search activities to part-time work. Accordingly, we believe the review examiner erred in finding that the claimant was not capable of, available for, and actively seeking work as of August 29, 2022.

We, therefore, conclude as a matter of law that the claimant met all of the requirements of G.L. c. 151A, § 24(b), beginning the week of August 28, 2022.

The review examiner's decision is affirmed in part and reversed in part. The claimant is denied benefits from June 16, 2022, through August 27, 2022. The claimant is entitled to receive benefits for the week of August 28, 2022, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 18, 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

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