

**The claimant established that, except for two weeks during her benefit year, she was capable of, available for, and actively seeking suitable part-time work. As the health reasons causing her to limit her availability to part-time work were the same urgent, compelling, and necessitous reasons which caused her to resign from her former employer, she is eligible for benefits pursuant to G.L. c. 151A, § 24(b) and 430 CMR 4.45.**

**Board of Review  
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Chairman  
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Member**

**Issue ID: 0078 0995 94**

### 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. Benefits were denied on the ground that the claimant was not capable of, available for, or actively seeking work as required under G.L. c. 151A, § 24(b).

The claimant had filed a claim for unemployment benefits, effective July 17, 2022, which was denied in a determination issued by the agency on September 17, 2022. The claimant appealed to the DUA Hearings Department. Following a hearing on the merits, the review examiner affirmed the agency's initial determination in a decision rendered on December 7, 2022. The claimant sought review by the Board, which denied the appeal, and the claimant appealed to the District Court pursuant to G.L. c. 151A, § 42.

On April 5, 2023, the District Court ordered the Board to obtain further evidence. Consistent with this order, we remanded the case to the review examiner to take additional evidence concerning the reason for the claimant's separation from employment as well as her availability for and efforts to find part-time employment during her benefit year. The claimant attended the remand hearing with counsel. Thereafter, the review examiner issued his consolidated findings of fact.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant was ineligible for benefits because due to her medical condition, she was not available for or seeking full-time employment, is supported by substantial and credible evidence and is free from error of law.

After reviewing the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, the claimant's appeal, the District Court's Order, and the consolidated findings of fact, we affirm in part and reverse in part the review examiner's decision.

### Findings of Fact

The review examiner's consolidated findings of fact and credibility assessment, which were issued following the District Court remand, are set forth below in their entirety:

1. The claimant filed a claim for unemployment benefits with an effective date of July 17, 2022.
2. Prior to filing her claim, the claimant worked fulltime as a senior administrator in a local [government office], where she had worked for over ten years.
3. In her role as senior administrator, the claimant maintained fulltime day hours in the office, and was required to be on call 24 hours a day to assist in coordinating responses to after hours and emergency matters.
4. The claimant was [sic] primary care giver to her [four] minor children.
5. For several years, the claimant has experienced significant health challenges, including but not limited to thyroid cancer, hypertension, and high levels of anxiety for which she required ongoing medical and psychological counseling.
6. The combination of responsibilities in her home and work environment resulted in increased stress on the claimant and exacerbated her medical and psychological issues.
7. The claimant's primary care physician "doctor" recommended that the claimant take time off from her full-time stressful work environment in the [government office] and seek a less stressful part-time position. The physician expected the claimant would be out of full-time work for twelve months.
8. On or about July 8, 2022, and pursuant to her doctor's recommendation, the claimant stopped working in the [government office] and began searching for a part-time customer service or an administrative position.
9. During the period from July 10, 2022, throughout the claimant's benefit year to the date of the hearing, the claimant's health issues continued and prevented her from being able to work full-time hours. The claimant's health issues did not prevent her from being able to work part-time hours consistent with her doctor's recommendation.
10. Since July 10, 2022, the claimant was not able to work full-time hours because of her doctor's recommendation.
11. Since July 10, 2022, the claimant could work between 20 and 25 hours each week during evenings and weekends in a customer service or administrative position, if such a position had been offered.
12. Since July 10, 2022, the claimant had no scheduling conflicts that would prevent her from taking part-time work during evenings and weekends because her husband could assist with childcare after his work.

13. Since July 10, 2022, the claimant was not looking for full-time work because of her health issues.
14. Since July 10, 2022, the claimant was looking for part-time positions in the customer service or administrative fields.
15. Since July 10, 2022, the claimant put her resume on multiple web-based platforms, including the Commonwealth of Massachusetts job listings and looked for work at least [three] times each week during her benefit year.
16. On September 17, 2022, the DUA sent the claimant a Notice of Disqualification stating she was disqualified from receiving unemployment benefits from July 3, 2022 and indefinitely thereafter.
17. On October 27, 2022, the claimant received a Notice of Approval of Redetermination that she left her job at the [government office] because of urgent, compelling, and necessitous health care reasons.

#### Credibility Assessment:

Throughout the hearing, the claimant's testimony was highly credible and her answers with crisp, clear, and responsive. Her candor and the detail regarding the stressful circumstances in which she found herself was evident. The claimant's testimony was consistent between the original hearing and the remand hearing about her circumstances including her doctor's recommendation, the hours she could work and the methods she was using to look for work. The claimant's testimony was corroborated by her doctor's note.

#### 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 conclusion is free from error of law. After such review, the Board adopts the review examiner's consolidated findings of fact except as follows. In Consolidated Findings ## 8, 14, and 15, we reject the dates of July 8, 2022, and July 10, 2022, as the dates the claimant began searching for work, as this is inconsistent with the claimant's testimony. We reject the portion of Consolidated Findings ## 9 and 11, which indicates that the claimant had been able to work part-time for the entire period beginning July 10, 2022, because it is also not consistent with the claimant's testimony. In adopting the remaining findings, we deem 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, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant is ineligible for benefits during every week in her benefit year, beginning July 17, 2022.

At issue in this case is the claimant's eligibility under 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 review examiner's original decision disqualified the claimant because she was not available for, or actively seeking, full-time work. Ordinarily, to be eligible for benefits, a claimant must be available for full-time work.<sup>1</sup> There are a limited number of circumstances set forth under 430 CMR 4.45, when claimants are permitted to restrict their availability to part-time work. These regulations state, in relevant part, 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, and . . .

(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:

a. in the case of an individual who meets the requirements of 430 CMR 4.45(1)(a) requires greater hours than those used to establish the individual's prior work history of part-time employment; or

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.

The District Court remanded this case for us to consider whether the claimant met the criteria to limit her availability to part-time work under 430 CMR 4.45(1)(b).

In a separate issue, the DUA has determined that the claimant left her former full-time employer because of urgent, compelling, and necessitous health care reasons. Consolidated Finding # 17.<sup>2</sup> The record before us indicates that the health issues underlying the urgent, compelling, and necessitous reasons for leaving that employment included thyroid cancer, hypothyroidism,

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<sup>1</sup> See G.L. c. 151A, §§ 1(r)(1) and (2), 29(a) and (b), which reflect the Legislature's expectation that an unemployed worker will only be eligible for benefits if she is unable to obtain full-time work.

<sup>2</sup> See DUA Issue ID # 0077 7168 32.

hypertension, and anxiety. *See* Consolidated Findings ## 5–7 and Remand Exhibit 6.<sup>3</sup> Moreover, these same health conditions continued into the claimant’s benefit year, causing her to limit her availability to part-time work. Consolidated Finding # 9.

Next, we consider whether the claimant has proven that she was actively seeking and remained available for suitable work pursuant to 430 CMR 4.45(4), throughout the period that she seeks benefits. Consolidated Findings ## 8, 9, 11, 12, 14, and 15 provide that, since separating from the employer on or about July 8, 2022, the claimant had no health issues that prevented her from being capable of working part-time hours, she could work between 20–25 hours each week during evenings and weekends, and she began actively searching for positions in the customer service and administrative fields at least three times per week during her benefit year. These findings are accurate except for two weeks.

Because the claimant seeks benefits only as of the beginning of her benefit year, which began on July 17, 2022, this is the only relevant period before us. During the hearing, the claimant acknowledged that she did not search for any work during the first week of her claim, the week ending July 23, 2022. She further testified that she was neither capable of, nor available for, any work during the week ending August, 20, 2022, as she believed she had a lot of medical appointments that week. In light of this testimony, we reject the review examiner’s findings to the extent they indicate that the claimant had been able, available for, and actively seeking work in every week during her benefit year.

We, therefore, conclude as a matter of law that, with the exception of two weeks, the claimant has met her burden to show that she was capable of, available for, and actively seeking suitable work pursuant to G.L. c. 151A, § 24(b), and 430 CMR 4.45.

The review examiner’s decision is affirmed in part and reversed in part. The claimant is denied benefits for the weeks ending July 23, 2022, and August 20, 2022. The claimant is entitled to receive benefits for the period July 24 through August 13, 2022, as well as beginning August 21, 2022, and for subsequent weeks, if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - June 5, 2023**



Paul T. Fitzgerald, Esq.  
Chairman



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<sup>3</sup> Remand Exhibit 6 is a Health Care Provider’s Statement of Capability, signed by the claimant’s physician on February 10, 2023. While not explicitly incorporated into the review examiner’s findings, this exhibit, as well as the portions of the claimant’s testimony referenced below, are part of the unchallenged evidence introduced at the hearing and placed in the record, and they are 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).

Charlene A. Stawicki, Esq.  
Member

Member Michael J. Albano 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