

**Although the claimant was initially incapable of performing work while recovering from foot surgeries, he timely submitted medical documentation confirming he became capable of working as of February 12, 2023. His disqualification under G.L. c. 151A, § 24(b), ends as of that date.**

**Board of Review  
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**Issue ID: 0078 7977 25**

### 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 became separated from employment and filed a claim for unemployment benefits with the DUA, effective December 11, 2022. On January 5, 2023, the DUA issued a determination denying benefits, which the claimant appealed to the DUA hearings department. Following a hearing on the merits attended by the claimant, the review examiner modified the agency's initial determination, denying benefits for the period between November 13, 2022, and March 25, 2023, but awarding benefits for the period beginning March 26, 2023, in a decision rendered on September 16, 2023. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not capable of working during the applicable period 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 was not eligible for benefits from November 13, 2022, through March 25, 2023, because he was not capable of working during that period, 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 claim for unemployment benefits with an effective date of 12/11/22.
2. Prior to filing his claim for benefits, the claimant worked restaurants – as a cook, maintenance worker, and cleaner, all types of work he has done in the past.

3. The claimant had foot surgeries on 11/14/22 and 12/23/22 and was unable to work.
4. On 1/2/23, one of the claimant's health care providers completed the Health Care Provider Statement of Capability (HCPS) indicating the claimant was unable to work full-time or part-time with or without restrictions. The statement also indicated no anticipated date for the claimant to be cleared to return to work.
5. The claimant certified weekly that he was able, available and seeking work, despite being unable to work due to his foot surgeries.
6. The claimant has not submitted medical documentation showing if and when he was cleared to return to work, and whether he is able to work full-time or is restricted to part-time.
7. Beginning the week of 3/26/23, the claimant was able to return to work at least part-time as evidenced by his reported hours and earnings.
8. The claimant looks for restaurant work weekly.

#### 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 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 findings of fact except as follows.

In Finding of Fact # 6, the review examiner found that the claimant had not submitted medical documentation showing if and when he had been cleared to return to work. In her analysis, the review examiner further noted that she had kept the record open for two weeks to allow the claimant to submit documentation to show if and when he was medically cleared to return to work, but he failed to do so.

However, in our review of the case, the DUA's UI Online electronic database shows that the claimant did submit a Health Care Provider's Statement of Capability indicating that he became capable of returning to work full-time on February 12, 2023. The form was printed on June 5, 2023, it was signed by the claimant's medical provider on July 11, 2023, and it was mailed to the DUA with a postmark of September 8, 2023 — within the two weeks allotted by the review examiner. However, the document was stamped as received by the DUA on September 20, 2023, which was after the decision was issued on September 16, 2023. Thus, we disregard Finding of Fact # 6. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence.

Although we agree with the review examiner's decision that the claimant was medically not capable of working and thus not eligible for benefits under G.L. c. 151A, § 24(b), as of November

13, 2022, we disagree with the end date of claimant's disqualification. Although the review examiner concluded that the claimant's disqualification should end on March 25, 2023, agency records show that the claimant became medically capable of working as of February 12, 2023, and so this disqualification should end on that date.<sup>1</sup>

The review examiner's decision is affirmed in part and reversed in part. The claimant is not entitled to receive benefits from November 13, 2022, through February 12, 2023, pursuant to G.L. c. 151A, § 24(b). The claimant is entitled to benefits as of February 13, 2023, if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - August 30, 2024**



Paul T. Fitzgerald, Esq.  
Chairman



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.

JPCA/rh

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<sup>1</sup> The review examiner found that the claimant satisfied the other two requirements of G.L. c. 151A, § 24(b). He was available for work, and he looked for restaurant work weekly. See Findings of Fact ## 5 and 8.