

Because the childcare issues limiting the claimant’s availability to work more than part-time were the same urgent, compelling, and necessitous reason that caused her to leave her job, and she was actively seeking work through February 11, 2023, she was eligible for benefits pursuant to G.L. c. 151A, § 24(b) and 430 CMR 4.45 through that date. As the claimant stopped seeking work beginning the week of February 12, 2023, she was no longer eligible for benefits under G.L. c. 151A, § 24(b).

**Board of Review
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Issue ID: 0079 2760 93

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 February 27, 2022. Subsequently, the DUA found the claimant ineligible for benefits beginning January 22, 2023, in a determination issued on February 17, 2023. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by the claimant, the review examiner affirmed the agency’s initial determination and denied benefits in a decision rendered on April 22, 2023. 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 was not entitled to benefits because she was not capable of working full-time and limited her availability to 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 has work experience in retail management.

2. Since January 2022, the claimant's anxiety has prevented her from working full-time following someone threatening her at a previous job and a physical altercation with a family member in January 2022.
3. The claimant mentally has been unable to work full-time beginning in January 2022.
4. The claimant worked as a part-time baker helper for a school district from July 2022, until January 20, 2023, when she separated.
5. The claimant had to quit her job for the school district because she lost her childcare, when her ex-stepmother had to undergo surgery, and was therefore unable to drive her children to school.
6. The claimant's hours with the school district conflicted with when the claimant had to drop off her children at school.
7. Beginning January 20, 2023, the claimant was restricted to being available part-time due to her childcare issues.
8. The claimant has struggled with pain and numbness in her legs, which was suspected to be neuropathy.
9. The claimant had leg pain after working for 5–6 hours a day.
10. The claimant felt that her leg condition was getting worse, which prompted her to go to a doctor in 2023 to undergo testing.
11. Since January 22, 2023, the claimant's leg pain limits her ability to work full-time because she cannot be on her feet for long periods of time.
12. From January 20, 2023, until February 11, 2023, the claimant was looking for work seven days a week.
13. The claimant looked for part-time jobs online in the retail and nursing facility fields.
14. The claimant stopped looking for work on February 12, 2023, because of her concerns for her medical conditions, including possibly having neuropathy.

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. 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 is not entitled to benefits beginning January 22, 2023.

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

The review examiner’s original decision disqualified the claimant because she was not capable of or available for full-time work. Ordinarily, to be eligible for benefits, a claimant must be available for full-time work.¹ However, 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. 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

In the present case, the claimant conceded that she was not available for full-time work beginning January 20, 2023, due to the need to provide childcare for her children. Finding of Fact # 7. While this limitation would generally render her ineligible for benefits, a review of UI Online, the DUA’s online recordkeeping system, shows that the review examiner issued a decision in Issue ID # 0079 1123 02 concluding that the claimant separated from her previous employer involuntarily and for urgent, compelling, and necessitous reasons due to a lack of childcare. Accordingly, DUA records confirm that the claimant limited her availability to part-time work for the same urgent, compelling, and necessitous reason that caused her separation. Findings of Fact ## 5–7.

While the claimant had other limitations on her ability to work, the findings of fact indicate these limitations were not so extensive as to effectively remove her from the labor force at the time of her separation. *See* Findings of Fact ## 3, 9, and 11. Further, the claimant’s uncontested testimony was that she would have been able to continue working her same part-time hours had the employer

¹ *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.

adjusted her schedule to accommodate a later start time.² As the claimant remained available for part-time work following her separation, she satisfied the requirements for limiting her availability to part time work under 430 CMR 4.45(1)(b).

The claimant was also performing daily work search activities in each week between January 20, 2023, and February 11, 2023. Finding of Fact # 12. Because the claimant was actively seeking work as required by G.L. c. 151A, § 24(b), and had otherwise met the conditions for limiting her availability for work, we conclude the claimant was entitled to partial benefits through February 11, 2023.

However, the claimant stopped searching for work on or around February 12, 2023, because of increased concerns surrounding her health. Finding of Fact # 14. We cannot determine from the record whether, at this time, the claimant's medical condition also further limited her ability to work. *See* Findings of Fact ## 10, 11, and 14. However, as the claimant was no longer actively seeking work within the meaning of G.L. c. 151A, § 24(b), she was not entitled to benefits, regardless of any other limitations on her capability or availability for work.

We, therefore, conclude as a matter of law that the claimant was entitled to partial benefits during the period between January 20, 2023, and February 11, 2023, because she met the conditions for limiting her availability for work under 430 CMR 4.45(1)(b), during this period. We further conclude that the claimant was not entitled to benefits beginning February 12, 2023, because she was not searching for work as required by G.L. c. 151A, § 24(b).

The review examiner's decision is affirmed in part and reversed in part. The claimant is entitled to receive benefits from the week of January 22, 2023, through February 11, 2023, if otherwise eligible. The claimant is denied benefits for the week beginning February 12, 2023, and for subsequent weeks, until she meets the requirements of G.L. c. 151A.

BOSTON, MASSACHUSETTS
DATE OF DECISION - June 12, 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)

² The claimant's uncontested testimony in this regard is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is 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).

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