

Since the claimant was medically cleared of his injuries prior to the effective date of his claim, he was capable of full-time work. Moreover, the record showed that he was available and actively seeking full-time work. Thus, he has met the eligibility requirements pursuant to G.L. c. 151A § 24(b), and is eligible for benefits.

**Board of Review**  
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**Issue ID: 0080 2389 07**

### 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 filed a claim for unemployment benefits with the DUA, which was denied in a determination dated May 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 June 17, 2023. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not capable of work and, thus, 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 take additional evidence regarding the claimant's ability to work. Thereafter, the review examiner issued his consolidated findings of fact. Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearings, 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 capable of working because he was not medically cleared to return to work, is supported by substantial and credible evidence and is free from error of law.

### Findings of Fact

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

1. The claimant submitted a claim for unemployment insurance (UI) benefits with the Department of Unemployment Assistance (DUA) having an effective date of 4/9/2023.

2. Prior to filing his claim for UI benefits, the claimant was employed by the Commonwealth of Massachusetts as a disabled veteran's outreach specialist and due to health reasons took an approved leave of absence under the Family Medical Leave Act (FMLA).
3. The claimant has an email dated 4/9/2023 about a Leave of Absence Determination Notice indicating an approved leave of absence from 9/11/2022 through 2/1/2023 under the employer's extended family medical leave policy. This email indicates further that a request for an extension of the claimant's medical leave for the period from 2/2/2023 through 2/11/2023 was denied because paperwork was not received.
4. The claimant has a single page taken from a fifty-page health record (page 6 of 50) identified in the page footer as [Hospital Name] Health Summary (Continuity of Care Document) which is undated and notes in a partially redacted line "able to outreach and be out, not in office" under the section heading "Interim History, Signs, Symptoms and Side Effects Since Last Visit."
5. The claimant has a letter dated 6/9/2023 from his doctor stating that the claimant has been in treatment with the doctor since 10/7/2022 and, related to his medical symptoms, took time off from work under the FMLA and from the end of February 2023, when his symptoms abated, he has been able to return to work.
6. Since 4/9/2023, the claimant was medically cleared of the injuries, illnesses, or medical restrictions which prevented him from working.
7. Since 4/9/2023, the claimant has been available to accept full-time work without accommodation for a medical restriction. The claimant is somewhat limited by access to transportation from his current location but would be available to accept a full-time job offer in an outreach position if one was available.
8. Since 4/9/2023, the claimant has been making at least three job searches per week using online search engines and employment web sites including Indeed and JobQuest to locate outreach and house manager employment opportunities that would not require office work. The claimant has a strong preference for outreach work and would not be comfortable in an office cube environment.
9. On 5/17/2023, the DUA sent the claimant a Notice of Disqualification indicating that the claimant stated he is unable to work and therefore does not meet the availability requirements of the Law and is not entitled to benefits for the period beginning 4/9/2023 and for an indefinite period thereafter until he meets the requirements of the Law.

10. The claimant appealed the DUA's determination.

Credibility Assessment:

During the first hearing, the claimant did not have a health care provider's statement of capability or letter from his doctor stating that he could resume employment following a medical leave of absence. However, during the remand hearing, the claimant provided a letter from his treating physician establishing that since the end of February 2023, when his symptoms abated, he has been able to return to work. Although the image of the letter shows inconsistent lines across the page, making it appear as composed from different documents, and the typestyle and margins are consistent with this finding, this may be attributable to the folds in the page. Thus, taken with the claimant's testimony, the letter is taken on its face for what is purported.

The Board's order requested the claimant submit an unredacted version of a page from his medical record. The claimant did not provide this document prior to the remand hearing or during the time the record remained open to receive it.

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. 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.<sup>1</sup> However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant was not entitled to benefits.

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. . . .

It is the claimant's burden to show that he meets all the requirements under this statutory provision in order to be eligible to receive benefits. In the review examiner's initial decision, he found that the claimant was incapable of work, because he did not provide sufficient medical documentation showing that he was cleared to return to work after a leave of absence. On appeal to the Board, the claimant submitted a doctor's note stating that he was cleared to return to work.

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<sup>1</sup> The review examiner left the record open for the claimant to submit the Board's requested documentation, but he did not do so. Our decision is based upon the documents in the record.

We remanded the case to the original review examiner to consider the claimant's additional medical documentation.

By letter dated June 9, 2023, the claimant's doctor stated he was able to return to work by the end of February, 2023. Consolidated Finding # 5. However, the claimant was medically cleared of his injuries by the time he filed his claim for unemployment benefits, beginning April 9, 2023. See Consolidated Findings ## 1 and 6. The claimant has therefore met the capability requirement under G.L. c. 151A, § 24(b).

As to the availability and work search requirements, the review examiner made findings of fact consistent with the claimant's testimony and documentation. Although he is somewhat limited by access to transportation, he would be able to accept full-time work if a position became available. Consolidated Finding # 7. Additionally, the review examiner found that the claimant engaged in three work searches each week in his career field. Consolidated Finding # 8. Thus, the claimant also has met the availability and actively seeking work requirements of the statute.

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 April 9, 2023, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - January 9, 2024**



Charlene A. Stawicki, Esq.  
Member



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.

MR/rh