

**Claimant's fibromyalgia, depression, and migraines rendered her unable to work full-time. However, she demonstrated that even with her medical limitations, she was able to, available for, and actively seeking part-time work. Held claimant met the eligibility requirements for limiting her availability to part-time work pursuant to 430 CMR 4.45(3) and (4), and thus, she was eligible for benefits under G.L. c. 151A, § 24(b).**

**Board of Review  
100 Cambridge Street, Suite 400  
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: 0080 2625 75**

### 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 separated from her last employer on March 14, 2023. She filed a claim for unemployment benefits with the DUA, effective March 12, 2023, which denied her benefits beginning May 7, 2023, in a determination issued on June 2, 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 August 1, 2023. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not able and available for full-time work and thus, she 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 disqualified from receiving benefits under G.L. c. 151A, § 24(b), because her medical condition rendered her incapable of performing full-time work, is supported by substantial credible evidence and is free from error of law.

### Findings of Fact

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

1. The claimant worked for the 1st employer from July 2021 to November 2021 as a full time Information Technology (IT) Administrator.
2. The claimant worked full time for the 2nd employer, a tele-health company, from February 27, 2022, until March 14, 2023, as an IT Engineer. The claimant

was discharged for a lack of work from this employer. The claimant worked onsite for this employer.

3. The claimant has been diagnosed with varies [sic] medical issues including fibromyalgia, depression, and migraines. The claimant is sometimes bed ridden due [sic] her symptoms associated with her medical issues.
4. On a letter dated June 10, 2023, the claimant's medical provider advised the following regarding the claimant:

"It is my medical opinion that [claimant] requires accommodations for work due to multiple medical problems. She may be unable to work a compete 8 hour day regularly. There may be some days where she has to work from home, or start work late due to symptoms. Her medical conditions cause both physical and cognitive impairments that can limit her ability to work. These flares are unpredictable at times. Her fibromyalgia may cause her to miss up 4-8 hours of work 1-3 times a week. Her migraines may cause her to miss 4-8 hours of work 1-2 times a week."

5. The claimant filed an initial unemployment claim effective the week beginning March 12, 2023.
6. On or about April 22, 2023, the claimant applied to receive Social Security disability benefits. The claimant is expecting the process to take approximately 6-8 months until the claimant finds out the results. The claimant believes if she is approved for Social Security disability payments that the claimant will longer have to worry about working.
7. The claimant has been looking for work weekly since the week beginning May 7, 2023. The claimant has been maintaining a work search activity log. The claimant has been looking for work 10 times per week. The claimant has been looking for full-time work and part-time work. The claimant has been looking for IT Help Desk or Engineering Positions. The claimant has been looking for remote and onsite work.
8. On a questionnaire that the claimant submitted to the Department of Unemployment Assistance for consideration, the claimant selected "No" to the following question: "Were you able to work full time during the week beginning 5/7/2023?" On this questionnaire, the claimant wrote: "I don't think I am able to work full time in the same industry without several concessions and reasonable accommodations set in place."
9. On June 2, 2023, the claimant's medical provider signed off on a Health Care Provider's Statement of Capability form regarding the claimant. The claimant filled out the portions of this form where a written response was required. The claimant's medical provider filled out portions of this form where a date was required or a Yes or No response was required.

10. On the June 2, 2023, Health Care Provider's Statement of Capability form regarding the claimant, the claimant's medical provider selected "yes" to the following question: "Has the patient been able (or capable) of working since 5/7/2023: [sic]"
11. On the June 2, 2023, Health Care Provider's Statement of Capability form regarding the claimant, the claimant's medical provider selected "no" to the following question: "Is the patient currently able to work in a full-time capacity with no restrictions?"
12. On the June 2, 2023, Health Care Provider's Statement of Capability form regarding the claimant, the claimant's medical provider wrote "11/30/2022" to the following question: "If no, on what date did the patient become unable to work full-time?"
13. The claimant has not been able and available to work full time since the week beginning May 7, 2023, due to her ongoing medical issues.
14. The claimant has only been able and available to work part-time since the week beginning May 7, 2023, due to her ongoing medical issues including fibromyalgia, depression, and migraines.
15. On June 2, 2023, the DUA issued a Notice of Disqualification denying the claimant benefits under Section 24(b) of the Law commencing the week beginning May 7, 2023, and until she met the requirements of the Law. The claimant appealed the Notice of Disqualification.

[Credibility Assessment:]<sup>1</sup>

During the hearing, the claimant contended that she has been able and available to work full time since the week beginning May 7, 2023. However, this contention is not deemed credible and acceptable where on a on a [sic] June 2, 2023, Health Care Provider's Statement of Capability form the claimant's medical provider wrote "11/30/2022" in response to the following question regarding the claimant: "If no, on what date did the patient become unable to work full-time?" The claimant's contention that she has been able and available to work full time since May 7, 2023, is also not deemed credible and acceptable where on a questionnaire that the claimant submitted to the DUA for consideration the claimant selected "no" to the following question: "Were you able to work full time during the week beginning 5/7/2023?"

### Ruling of the Board

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<sup>1</sup> We have copied here the portion of the review examiner's decision which sets forth her credibility assessment.

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. The Board rejects that portion of Finding of Fact # 4, which states that the date of the letter from the medical provider was June 10, 2023. The record reflects that the correct date of the letter is January 10, 2023. *See Exhibit # 3.*<sup>2</sup> In adopting the remaining findings, we deem them to be supported by substantial 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.

At issue is whether the claimant met the requirements 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 . . . .

Although not specifically stated in G.L. c. 151A, § 24(b), other provisions of the Massachusetts Unemployment statute establish that unemployment benefits are intended to assist claimants in finding and returning to full-time work. *See, e.g.,* G.L. c. 151A, §§ 29 and 1(r), which provide for the payment of benefits only to those who are unable to secure a full-time weekly schedule of work.

However, there are a limited number of circumstances set forth under the DUA regulations at 430 CMR 4.45, that permit claimants to restrict their availability to part-time work. In relevant part, these regulations state as follows:

(3) . . . [A]n otherwise eligible individual . . . may limit his/her availability for work during the benefit year to part-time employment provided, that the individual is:

- (a) a qualified individual with a disability;
- (b) provides documentation to the satisfaction of the commissioner substantiating an inability to work full-time because of such disability; and
- (c) establishes to the satisfaction of the commissioner that such limitation does not effectively remove himself/herself from the labor force.

(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. . .

430 CMR 4.44 sets out the definitions pertinent to 430 CMR 4.45:

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<sup>2</sup> Exhibit 3 is the letter from the claimant's doctor. We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. *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).

Disability means a physical or mental impairment that substantially limits a major life activity of such individual; ...

Major Life Activities means functions including but not limited to caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, the operations of major bodily functions, and *working*.

(Emphasis added.)

The record shows that, because of the claimant's diagnoses of fibromyalgia, depression, and migraines, she is disabled and unable to work full-time. *See* Findings of Fact ## 3 and 13. Since the claimant's medical condition is unpredictable at times and causes physical and cognitive impairments that limit her ability to work, we believe that the claimant meets the definition of a qualified individual with a disability. *See* Findings of Fact ## 4 and 13.

The review examiner found that, due to her medical conditions, the claimant is only capable of and available for part-time work. *See* Finding of Fact # 14. Since the claimant is able and available to work part-time, and she has been actively seeking part-time and full-time work, we are satisfied that the claimant's limitations do not effectively remove her from the labor force. *See* Finding of Fact # 7.

Under these circumstances, the claimant has demonstrated that she is a qualified individual with a disability that renders her incapable of working full-time, but her limitation does not effectively remove her from the labor force. She has also shown that she is available for and actively seeking suitable work.

We, therefore, conclude as a matter of law that the claimant may not be disqualified under G.L. c. 151A, § 24(b), due to her inability to work full-time.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning May 7, 2023, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - January 24, 2024**



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)**

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.

DY/rh