

The claimant established that 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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Issue ID: 0081 0690 34

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, effective July 16, 2023, which was denied in a determination issued on September 30, 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 November 8, 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, or actively seeking 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 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.

Findings of Fact

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

1. The claimant was working as an EP II for the employer, a provider of services for individuals suffering with mental disabilities. The claimant worked in that position from April, 2022 until she went out on FMLA in March of 2023. The claimant remained out on leave until she was separated from work on June 30, 2023.

2. While working in that position, the claimant was struggling to control her diabetes due to the stress of the job. The claimant was first diagnosed with diabetes in 2003.
3. The claimant saw a physician due to her condition and was diagnosed with anxiety in June of 2023 and placed on medication.
4. The claimant filed her claim for unemployment benefits on July 17, 2023. The effective date for the claimant is July 16, 2023.
5. After filing her claim for unemployment benefits, the claimant was looking for work as a Personal Care Attendant.
6. The claimant was conducting her work search by going online, looking on craigslist and utilizing a staffing agency. The claimant is performing three to four work search activities each week.
7. The claimant received an offer to work part-time (15 hours per week) to begin in February, 2024. The claimant accepted that offer but continues to perform her work search activities each week while waiting to start that job.
8. The claimant submitted the Health Care Provider's Statement of Capability with a date of September 6, 2023 (signed on September 25, 2023). The statement indicated that the provider began treating the claimant on 7/13/2023, last seeing the claimant on 9/25/2023 for "mental health". The provider responded "N" to the question "has the patient been able (or capable) to work since 6/25/2023." It further indicated that the claimant was not able to work in a full-time capacity without restriction. It listed the claimant's restrictions as "not in heavy patient-facing role with behavioral management responsibilities". In response to the question "If the patient is unable to work, when do you anticipate the patient will be able to return to work?", whereupon the provider did not respond.
9. On September 30, 2023, the claimant was issued a Notice of Disqualification under Section 24(b) of the Law, indicating that "Your health care provider's statement indicates that you are unable to work for an indefinite period of time. Therefore, you do not meet the capability requirements of the Law. Medical documentation indicates you are indefinitely unable to work because mental health. Therefore, you do not meet the capability requirements of the Law." "You are not entitled to receive benefits for the period beginning 6/25/2023 and for an indefinite period of time thereafter until you meet the requirements of the Law." The claimant filed an appeal to that determination.
10. By letter dated October 23, 2023, from the claimant's doctor, it indicates, "I have examined her and it is my medical opinion that (claimant name) can work part-time with restrictions. She should avoid highly people-facing roles in that involve de-escalation or working directly with multiple clients/patients with

active mental illness or developmental disability for at least the next 6-12 weeks. She is undergoing treatment and will need to develop therapeutic response. I have also made a referral to specialty care for her, which unfortunately for her medical condition requires both of these things to be effective and her medication will likely not reach full effect for at least 60 days. I am unable to predict when she will be able to return to work without restrictions but will continue to follow her care.”

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 original 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 eligible for benefits.

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.¹ 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 . . .

¹ Although not specifically stated in G.L. c. 151A, § 24(b), other provisions of the Massachusetts Unemployment Statute show that unemployment benefits are intended to assist claimants seek and return 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.

(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 DUA's record-keeping system, UI Online, contains information showing that, in a separate issue decided under G.L. c. 151A, § 25(e)(1), the DUA determined that the claimant left her former full-time employer on June 27, 2023, because of urgent, compelling, and necessitous health care reasons. That decision and the record before us show that the health issues underlying the urgent, compelling, and necessitous reasons for leaving that employment included diabetes and anxiety. Findings of Fact ## 2–3. Moreover, these same health conditions continued into the claimant's benefit year, causing her to limit her availability to part-time work. Findings of Fact ## 3, 8, and 10.

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. Nothing in the record indicates that the claimant had any restrictions on her availability for part-time work other than the above-mentioned health conditions. Further, we do not believe that the limitations placed on her ability to work part-time, namely avoiding “highly people-facing roles,” work involving “de-escalation” and “working directly with multiple clients/patients with active mental illness or developmental disability,” were so restrictive as to remove the claimant from the labor force. Finding of Fact # 10. Finally, Findings of Fact ## 5 and 6 provide that, since filing her claim, the claimant has been actively searching for work as a personal care attendant, performing three to four work search activities each week using various methods, including looking online and utilizing a staffing agency. These findings and the totality of the record before us establish that the claimant has met the requirements of 430 CMR 4.45(4), since the start of her claim.

We, therefore, conclude as a matter of law that 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 reversed. The claimant is entitled to receive benefits for the week beginning July 16, 2023, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - July 31, 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

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.

SVL/rh