

The Board rejected the review examiner's credibility assessment, which did not accept the claimant's Health Care Provider's Statement of Capability. The record demonstrates that she was a qualified individual with a disability who was capable of, available for, and actively seeking part-time employment. She is eligible for benefits pursuant to G.L. c. 151A, § 24(b), and 430 CMR 4.45(3).

**Board of Review
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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 employment and filed a claim for unemployment benefits with the DUA, effective September 24, 2023, which was denied in a determination issued on December 30, 2023. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on June 1, 2024. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant did not show that she was capable of working on a part-time basis 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 is ineligible for benefits because the medical records which she presented were not credible evidence of her ability to work, is supported by substantial and 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 filed a claim for unemployment insurance benefits effective September 24, 2023, with a benefit year end of September 21, 2024. The Department of Unemployment Assistance (DUA) calculated the claimant's weekly benefit amount as \$300.00, with an earnings disregard of \$100.00.

2. The claimant did not serve a waiting week.
3. The claimant only has a history of working in the field of education.
4. The claimant has no remote employment experience.
5. The claimant has suffered from depression, anxiety, fibromyalgia, and auto immune disease since October, 2023.
6. The claimant takes two (2) medications for her fibromyalgia in the morning that causes her to have an upset stomach.
7. If the claimant does not take the two (2) medications for fibromyalgia, she would have nerve pain in her neck and down her arms.
8. The claimant's auto immune disease causes the claimant to have sores on her hands and feet.
9. The claimant takes medication for her depression and anxiety.
10. Prior to filing the unemployment claim, the claimant was on Paid Family Medical Leave (PMFL).
11. Prior to filing the unemployment claim, the claimant was employed as a full-time teacher at a childcare company from March 2019, through October 4, 2023, when she separated from her employment.
12. In October 2023, the claimant filed for long-term disability due to her depression, anxiety, fibromyalgia, and auto immune disease.
13. For the week beginning October 15, 2023, the claimant was medically restricted from full-time employment due to her depression, anxiety, fibromyalgia, [sic] auto immune disease.
14. For the week beginning October 15, 2023, the claimant has limited her availability to part-time employment to no more than 19 hours, as disability benefits only allow individuals to work 19 hours or less.
15. For the week beginning October 15, 2023, the claimant searched for part-time employment completing a minimum of three (3) work searches per week through indeed.com, schoolspring.com, and jobexpert.com.
16. The claimant's "Health Care Provider's Statement of Capability" stamped on January 3, 2024, was not signed by the treating physician, and contained two separate types of handwriting, which indicated the claimant is currently able to work part-time, "due to joint pain that gets worse with prolonged working, and can only work 20 hours per week."

17. A second identical “Health Care Provider’s Statement of Capability” stamped on January 3, 2024, included an illegible signature and date of service.
18. On December 30, 2023, the DUA sent the claimant a Notice of Disqualification stating she was disqualified from receiving unemployment benefits for the period week beginning October 15, 2024, and indefinitely thereafter, as she did not meet the requirements of Section 24(b) of the Law.
19. As of the date of the hearing (May 23, 2024), the claimant’s long-term disability application was pending resolution.

[Credibility Assessment:¹]

During the hearing, the claimant asserted that even though she suffered from fibromyalgia, depression, anxiety, and an auto immune disease, she has been medically capable of part-time employment. In support of her testimony, the claimant provided a health care provider statement stamped with a date of service of January 3, 2024. However, the document is not signed, not dated, and has two different types of handwriting on it. The claimant was given ample time following the hearing to provide new medical documentation from the medical provider, but the claimant provided the same exact medical document, but with an illegible signature and service date. It is not reasonable or logical that the first medical provider document would have two different types of handwriting on it, and not be signed and dated. Furthermore, it is not reasonable or logical that the second medical provider document would be identical to the first, but now have a signature and date on it. As such, the medical records provided by the claimant are deemed to not be credible, and thus it cannot be concluded the claimant was medically cleared to work in a part-time manner as of October 15, 2024.

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 ineligible for benefits.

At issue in this case is whether the claimant meets the requirements of G.L. c. 151A, § 24(b), which provides, in pertinent part, as follows:

¹ We have copied and pasted here the portion of the review examiner’s decision that includes his credibility assessment.

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

Ordinarily, to be eligible for benefits, a claimant must be available for full-time work.² There are a limited number of circumstances set forth under the DUA regulations at 430 CMR 4.45, which permit claimants to restrict their availability to part-time work. 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:

(a) has a prior work history of part-time employment; establishes to the satisfaction of the commissioner good cause for restricting availability during the benefit year to part-time employment and that such good cause reason is the same as, or is related to that which existed during the prior work history of part-time employment; and is available during the benefit year for at least as many hours of work per week as used to establish the prior work history of part-time employment; or

(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

(2) An individual who falls under the provisions of 430 CMR 4.45(1)(b) who obtains suitable part-time employment during the benefit year shall be determined not to be in partial unemployment and will not be eligible to receive partial unemployment benefits while so employed in the benefit year.

(3) Notwithstanding the provisions of 430 CMR 4.45(1), an otherwise eligible individual who does not meet the requirements of 430 CMR 4.45(1) 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.

² See G.L. c. 151A, §§ 1(r)(1) and (2), and 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.

(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.

In the present case, the findings show that the claimant has been diagnosed with fibromyalgia, auto-immune disease, depression, and anxiety. *See* Finding of Fact # 5. There is no question that these conditions or the medications that she takes to control these conditions have restricted her ability to work. *See* Findings of Fact ## 6–9 and 13. As such, she meets the definition of a qualified individual with a disability. *See* 430 CMR 4.44. The issue is whether she meets all of the requirements of 430 CMR 4.45(3). If so, she may limit her availability to part-time employment and still collect unemployment benefits.

In his decision, the review examiner concluded that the claimant failed to prove that she could still work with these medical conditions, and, therefore, she did not meet the requirement to be capable of working. Although she submitted medical evidence to the contrary, he determined that this evidence was not credible.

Such assessments are within the scope of the fact finder's role, and, unless they are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. *See School Committee of Brockton v. Massachusetts Commission Against Discrimination*, 423 Mass. 7, 15 (1996). "The test is whether the finding is supported by 'substantial evidence.'" *Lycurgus v. Dir. of Division of Employment Security*, 391 Mass. 623, 627 (1984) (citations omitted). "Substantial evidence is 'such evidence as a reasonable mind might accept as adequate to support a conclusion,' taking 'into account whatever in the record detracts from its weight.'" *Id.* at 627–628, *quoting New Boston Garden Corp. v. Board of Assessors of Boston*, 383 Mass. 456, 466 (1981) (further citations omitted).

Specifically, the review examiner deemed to be not credible a Health Care Provider's Statement of Capability (HCPSC) from the claimant's physician, which stated that the claimant could work up to 20 hours per week. We believe that this assessment is unreasonable for several reasons.

The claimant presented two copies of this document. Both copies are identical except that Exhibit 8 does not have a health care provider's signature or a date with that signature. Exhibit 11 has a signature and date under the physician's name. During the hearing, the review examiner had only Exhibit 8 before him and pointed out that it was missing the physician's signature. The claimant

was surprised, testifying that, when she picked up the form, she thought it was signed and sent it to DUA via U.S. Mail.³

The review examiner asked the claimant to go back to her doctor and obtain new documentation, giving her a deadline of May 28, 2024. The hearing was held on Thursday, May 23, 2024, right before the long Memorial Day weekend. When the claimant asked to be given until May 30, 2024, when she had an appointment with her doctor, he refused, albeit extending the deadline to May 29th. In this regard, the review examiner's credibility assessment inaccurately states, "[t]he claimant was given ample time following the hearing to provide new medical documentation from the medical provider." We believe that it was unreasonable to penalize her for merely producing a duplicate but signed copy of the original HCPSC (Exhibit 11) within that narrow time frame.

As a second reason, the review examiner questions the authenticity of the HCPSC because it has two different types of handwriting on it and the signature is illegible. During the hearing, the claimant explained that a nurse completed the form for the doctor to sign. In our experience, this is quite common, particularly when the health care provider is a physician with a busy practice. Regardless of who writes the answers on the form, a health care provider's signature is deemed to the provider's approval of the contents. We are also unaware of any rule of evidence or law that requires a medical doctor to have a legible signature. Meanwhile, in the upper right corner of Exhibits 8 and 11, there is a computer-generated stamp with both a UPC and scanning symbol, as well as the patient's printed name, date of birth, date of service, and medical doctor's name, which match the handwritten information on the form. This added information on the HCPSC indicates that the exhibits are an authentic medical record from this physician's office.

The review examiner also penalizes the claimant for failing to produce a copy of her Social Security Disability application, which he also demanded by May 29th.⁴ While a copy of the application would have been helpful to review in assessing the claimant's ability to work, it is not the only evidence which the review examiner must consider. *See* G.L. c. 151A, § 39(b). "If the proponent has presented the best available evidence, which is logically adequate, and is neither contradicted nor improbable, it must be considered." New Boston Garden Corp. v. Board of Assessors of Boston, 383 Mass. 456, 471 (1981), *quoting* L.L. Jaffe, *Judicial Control of Administrative Action* 598, 608 (1965). Here, the claimant produced a signed statement from her doctor that she is able to work part-time. It is neither contradicted nor improbable. Thus, we are satisfied that it meets her burden to show that she is capable of working.

We also consider Finding of Fact # 14, which indicates that the claimant limited her availability to part-time employment of no more than 19 hours per week to qualify for SSDI. If the claimant's desire to get long-term disability benefits was the only basis for limiting her availability to part-time work, we would agree that she would not qualify for unemployment benefits. However, the

³ While not explicitly incorporated into the review examiner's findings, this portion of the claimant's testimony, as well as the testimony referenced below, 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).

⁴ In her Board of Review appeal, the claimant explains that she called the Massachusetts disability department daily for a copy of her application, but all the Social Security Administration sent her was a letter confirming that her application was pending (Exhibit 10),

record also includes medical evidence of several disabilities and the physician's statement that she can work 20 hours per week. For this reason, she satisfies the requirements under 430 CMR 4.45(3) to limit her availability to part-time employment.⁵

Finally, Finding of Fact # 15 indicates that the claimant has been engaged in an active work search. Although not in the findings, we note that the claimant further testified that she is searching for any kind of work that does not require her to get up and down from the floor as she had done as a teacher, such as answering phones or general office work.

We, therefore, conclude as a matter of law that the claimant has satisfied her burden to show that she is capable, available for, and actively searching for part-time work, as required pursuant to G.L. c. 151A, § 24(b) and 430 CMR 4.45(3).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning October 15, 2023, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - November 27, 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

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.

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⁵ Nothing in the record indicates that the claimant turned down suitable work simply because it required her to work 20 hours rather than 19. The claimant is subject to disqualification under the separate provision, G.L. c. 151A, § 25(c), if she turns down suitable work because of this extra hour.