

The claimant established that she was able and available to work full-time with restrictions after knee surgery. However, because she failed to keep a work search log for every week she claimed benefits, and did not perform a minimum of three work search activities each week, she was not actively seeking work. She is disqualified 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: 0081 7992 20

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 affirm.

The claimant filed a claim for unemployment benefits with the DUA, effective December 17, 2023, which was denied in a determination issued on January 12, 2024. 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 May 22, 2024. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not capable of working 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 afford the claimant an opportunity to present additional evidence about her medical condition and work search efforts. The claimant attended the remand hearing. Thereafter, the review examiner issued his consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant was not capable of working after knee surgery, 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 are set forth below in their entirety:

1. The claimant's appeal is from a determination [sic] which she was denied benefits under Section 24(b) of the Law for the period beginning 12/17/2023 and for an indefinite period thereafter. The reason provided for the disqualification was due to the stating that she was not capable of working while recovering from knee surgery.

2. The claimant filed an unemployment claim which was established with an effective date of 12/17/2023.
3. The claimant last worked on 6/25/2023.
4. The claimant fell on an escalator on 6/25/2023 which required immediate knee surgery.
5. The claimant took a leave of absence from her full-time employment as a Personal Care Attendant.
6. The claimant was unable to work while recovering from her knee surgery.
7. The claimant was not physically capable to return to work at her personal care employment and became separated from the employer in December 2023.
8. The claimant's doctor restricted the claimant from working as a Personal Care Attendant due to her knee surgery and need for continued recovery.
9. The claimant's doctor wrote a letter dated 12/19/2023 which states that the claimant was unable to work at that time due to her knee injury and knee surgery from July 2023. The letter further stated that the claimant could not walk distances at that time. The doctor wrote that the claimant was being referred to an orthopedic specialist and physical therapy.
10. Effective 1/19/2024, the claimant began treatment with an Orthopedic Specialist who cleared the claimant to work full-time under the following restrictions: no prolonged standing or walking, no climbing, lifting, pushing, or pulling more than 20 pounds.
11. The claimant has been available for full-time employment effective 1/19/2024.
12. The claimant has been capable of full-time employment within her medical restrictions since 1/19/2024.
13. The claimant continued to seek work as a full-time Personal Care Attendant and did not seek work within her medical restrictions.
14. In April 2024, the claimant decided to seek employment within her medical restrictions.
15. The claimant began seeking work within her medical restrictions on 4/30/2024.
16. The claimant started seeking full-time work as an Office Assistant, Receptionist or Sitting Companion.

17. Since 4/30/2024, the claimant has been spending 1-2 days per week actively searching for full-time employment.
18. The claimant has not been performing 3 work search activities a week.
19. The claimant has searched for and applied to jobs through Indeed since 4/30/2024.
20. The claimant also searches for work by asking friends if they know of any job openings.
21. The claimant began working with a Community Health Worker in May 2024 who began assisting the claimant once a week to apply for any open positions through Indeed.com.
22. The claimant's Community Health Work[er] has assisted the claimant with completing a DUA Work Search Logs for the period of 5/26/2024 through 8/31/2024. The Work Search Log lists one work search activity a week.
23. The claimant attended a medical appointment on 6/18/2024 with an Orthopedic Specialist who informed her that she would remain under the medical restrictions of no prolonged standing or walking, no climbing, lifting, pushing, or pulling more than 20 pounds.
24. On 8/16/2024, the claimant's doctor wrote a letter which states that the claimant is permanently disabled from her usual occupation as a patient care assistant, however, she has been capable of working under medical restrictions since 1/19/2024.

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 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 except as follows: We reject the portion of Consolidated Finding # 22 that indicates that the work search log period began on May 26, 2024, as the evidence shows the beginning date of the work search log starts on May 12, 2024.¹ In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. We further believe that the review examiner's legal conclusion that the claimant is ineligible for benefits pursuant to G.L. c. 151A, § 24(b), is supported by the substantial and credible evidence in the record.

¹ The work search logs, marked as Remand Exhibit # 9, are part of the unchallenged evidence introduced at the hearing and placed in the record, and they are 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).

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

We note at the outset that the claimant bears the burden to prove that she meets the requirements of G.L. c. 151A, § 24(b). *See Evancho v. Dir. of Division of Employment Security*, 375 Mass. 280, 282–283 (1978) (“the burden rests on the unemployed person to show that his continued unemployment is not due to his own lack of diligence”) (citation omitted). For each week that she claims benefits, she must be physically capable of, available for, and actively seeking full-time work.²

The review examiner initially concluded that the claimant had not shown that she was medically capable of full-time employment after knee surgery and denied the claimant benefits. We remanded the case for the review examiner to obtain additional evidence pertaining to the claimant’s ability to work and her work search efforts.

After the remand hearing, the review examiner found that the claimant was medically cleared to return to full-time employment with restrictions. *See Consolidated Finding # 10*. Yet, she would not be able to return to work in her former occupation as a personal care attendant. *See Consolidated Finding # 24*. Based upon these findings, the review examiner determined that the claimant was capable and available to work beginning January 19, 2024. *See Consolidated Findings ## 11 and 12*. We agree. However, the claimant is not eligible for benefits, because the review examiner also found that the claimant did not engage in an active work search each week. *See Consolidated Findings # 18*.

Pursuant to G.L. c. 151A, § 24(b), individuals seeking unemployment benefits are also required to show that they have engaged in an active work search effort to find new employment. The Supreme Judicial Court defers to the DUA to set the standard for what constitutes an active work search. *Grand v. Dir. of Division of Employment Security*, 393 Mass. 477, 480–481 (1984). Whether an unemployed person is unable to obtain work is “largely a question of fact as to which the burden rests on the unemployed person to show that his continued unemployment is not due to his own lack of diligence.” *Evancho v. Dir. of Division of Employment Security*, 375 Mass. 280, 282–283 (1978).

The DUA expects a claimant to make an active and realistic search for work, taking steps that a reasonable person in the claimant’s circumstances would take if interested in obtaining work. Consideration is given to the customary methods of obtaining work in the claimant’s usual occupation or in work for which the claimant is suited. *See DUA Adjudication Handbook* (revised Mar. 1, 2020), chapter 4(A)(1). To meet the active work search requirement, the DUA expects claimants to complete at least three work search activities per week. *See DUA Adjudication*

² 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.

Handbook, chapter 4, § 4(B). The DUA also asks claimants to maintain a log of their job search, including a list of all contacts made, the dates of such contacts, the names, addresses, and phone numbers of any individuals contacted, and the results of each contact. *See* DUA Adjudication Handbook, chapter 4, § 4(A) and (B).

Based on the findings and record before us, the claimant has not demonstrated that she was actively searching for new employment since filing a claim for benefits. The review examiner found that the claimant was not actively seeking work within her medical restrictions until April 30, 2024, and that she did not start maintaining a record of her weekly work search activity until May 12, 2024. *See* Consolidated Findings ## 2, 8–10, 13, 15, 22, and 24. In addition, the reviewer examiner found that, although the claimant engaged in some work search activity, she did not meet the minimum work search requirements by performing three work search activities each week. *See* Consolidated Findings ## 18, 19, and 20. The work search logs provided by the claimant reveal that she performed only one work search activity per week. *See* Consolidated Finding # 22. Because the claimant was not actively looking for work during the benefit year as required by the DUA, she is not eligible for benefits, regardless of her capability and availability to work.

We, therefore, conclude as a matter of law that the claimant has failed to meet her burden to show that, in each week of her claim, she met the requirements of G.L. c. 151A, § 24(b), to be capable of, available for, and actively seeking full-time work.

The review examiner's decision is affirmed. The claimant is denied benefits for the week beginning December 17, 2023, and indefinitely thereafter, until she meets the requirements of G.L. c. 151A, § 24(b).

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 2, 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.

DY/rh