

The claimant met the availability requirement of G.L. c. 151A, § 24(b), as she demonstrated that she was available to work full-time during hours when her boyfriend could care for her mother.

**Board of Review
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Issue ID: 0081 9436 80

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 effective date of November 12, 2023. In a determination issued on January 25, 2024, the DUA denied benefits to the claimant. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, the review examiner affirmed the agency's determination, denying benefits effective October 27, 2023. The review examiner's decision was rendered on March 16, 2024. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not available for work as of October 27, 2023, 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 obtain additional evidence pertaining to the claimant's availability for work. The claimant participated in the remand hearing. Thereafter, the review examiner issued her 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 eligible for benefits due to the need to care for her mother, 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 started working 15 hours per week as an administrative assistant at a salon on or about 8/31/16.
2. The claimant's hours gradually increased to 20 to 30 hours per week. She worked at the salon until 10/27/23.

3. The claimant performed some scheduling duties remotely while working for the salon.
4. Prior to working at the salon, the claimant worked for an employer that allowed her to work a hybrid in-person and remote schedule. When she worked remotely, she prepared vendor spreadsheets and accounts payable invoices.
5. The claimant has experience with bookkeeping and customer service/answering phones, which are tasks that can be done remotely.
6. The claimant filed an unemployment insurance claim on 11/12/23.
7. The claimant was capable of working prior to filing the above claim and continues to be able to work.
8. The claimant's mother lived with the claimant prior to the claimant filing the above unemployment insurance claim.
9. The claimant's mother was diagnosed with end-stage pulmonary fibrosis. It was unsafe for her mother to get out of bed and transfer to different locations without assistance as of approximately 10/25/23.
10. The claimant's mother started to receive hospice care at the claimant's home on 12/7/23, once or twice per week, for approximately one hour per visit.
11. The claimant's mother's primary care provider filled out a healthcare provider's statement of capability form regarding the claimant's mother on 1/18/24, and said the claimant was providing 24/7 care for her mother.
12. The claimant has siblings. They could not be relied upon to assist the claimant with caring for their mother.
13. The claimant's boyfriend was available to provide care to the claimant's mother from approximately 4:00 p.m. to approximately 11:00 p.m. on weekdays, and from 9:00 a.m. to 3:00 p.m. on weekends, as of 12/3/23.
14. The claimant was available to work outside of the home from approximately 4:00 p.m. to approximately 11:00 p.m. on weekdays, and 9:00 a.m. to 3:00 p.m. on weekends, as of 12/3/23, if her boyfriend was there to care for her mother.
15. The claimant participated in two or three phone interviews for office manager and administrative assistant positions after 11/12/23. She was not offered those positions.

16. The claimant had an in-person interview for an evening administrative assistant position at a school in February 2024. She was not offered the position.
17. The claimant's mother passed away on 4/19/24.
18. The claimant performs at least three work search activities per week and has done so since she filed the above claim.
19. The claimant searched for part-time and full-time remote and in-person positions after she filed the above claim and continues to do so. She searched for and continues to search for office manager, administrative assistant, medical scheduler, community outreach, customer service, retail, pharmacy courier, and data entry clerk positions.
20. The claimant has been available to work day and evening shifts since her mother passed away.

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 original 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. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant was indefinitely ineligible for benefits after October 27, 2023.

During their benefit year, claimants must meet the specific eligibility criteria set forth in 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.

In this case, the review examiner originally concluded that the claimant's need to care for her mother rendered her unavailable for work. However, after remand, the consolidated findings show that the claimant's boyfriend was available to provide that care for approximately 35 hours a week during the evening and 12 hours on weekends. *See Consolidated Finding # 13.* Thus, notwithstanding the mother's care needs, the record now shows that the claimant was available for full-time work.

The review examiner also found that the claimant has been capable of working throughout her claim. *See* Consolidated Finding # 7. Finally, Consolidated Findings ## 1, 4, 5, 18, and 19 provide that the claimant is actively searching for the type of administrative and customer service work which she is qualified to perform.

We, therefore, conclude as a matter of law that the claimant has met the requirements to be able, available for, and actively seeking work, as required by G.L. c. 151A, § 24(b).

The review examiner's decision is reversed. The claimant is entitled to benefits for the week beginning October 27, 2024, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - November 27, 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.

PGS/rh