

The claimant does not drive. However, he does not have any limits on the hours he can work and does not have any physical or medical conditions that limit his ability to work. The record shows that the claimant can work remotely or at a job that is accessible via public transportation, and he is applying for three jobs a week. Held that the claimant meets the requirements of 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: 0082 2936 91

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 January 14, 2024. In a determination issued on March 8, 2024, the claimant was disqualified beginning February 4, 2024. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, the review examiner affirmed the agency's determination and denied benefits in a decision rendered on May 29, 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 beginning February 4, 2024, and, thus, was disqualified under G.L. c 151A, § 24(b), as of that date. 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 not entitled to benefits since he had effectively removed himself from the labor force by limiting his availability to remote 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 are set forth below in their entirety:

1. Prior to filing an initial claim for unemployment benefits, the claimant worked for his most recent employer, a tech company, as a full-time Lead in the Escalation Command Center. The claimant started working for this employer in 1999. The claimant worked onsite for this employer until 2020. The claimant does not drive and took public transportation to work for this employer or a ride

share. The claimant worked remotely for this employer from 2020 until December 8, 2023. The claimant's last date of work for this employer was December 7, 2023. The claimant was terminated from his job at this employer's establishment effective December 7, 2023.

2. The claimant filed an initial unemployment claim effective the week beginning Sunday January 14, 2024.
3. On a questionnaire that the claimant submitted to the Department [of] Unemployment Assistance for consideration, the claimant selected "No" to the following questions: "Were you able to work full time during the week beginning 2/11/2024," and "Are you now able to work full time." On this questionnaire, the claimant wrote "65 and not feeling well" on several places on the questionnaire regarding his ability and availability to work. The claimant wrote this information as there was approximately two weeks after he was separated from his job as he was not feeling well.
4. The claimant has been physically capable of working full-time since the week beginning February 4, 2024.
5. The claimant has been looking for work weekly since the week beginning February 4, 2024. The claimant looks for work 3 times per week and maintains a work search activity log. The claimant has been looking only for remote work as the claimant does not drive. The claimant has not been looking for on-site work.
6. The claimant has been only available to work full time since the week beginning February 4, 2024, in a remote position. The claimant has not been available to work on-site. The claimant has not been available to work on-site as he does not drive.
7. On March 8, 2024, the Department of Unemployment Assistance issued a Notice of Disqualification denying the claimant benefits under Section 24(b) of the Law commencing the week beginning February 4, 2024, and [until] he met the requirements of the Law. In response to this Notice of Disqualification, the claimant appealed.

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. After such review, the Board adopts the review examiner's findings of fact except as follows. There appears to be a typographical error in Finding of Fact # 1 insofar as it states that the claimant worked remotely for his employer until December 8, 2023. Consistent with the record and the rest of Finding of Fact # 1, we believe that the review examiner intended to find that the claimant worked remotely until December 7, 2023. We reject Findings of Fact ## 5 and 6 insofar as they state that

the claimant has only been available for and looking for remote work as inconsistent with the evidence in the record. In adopting the remaining findings, we deem 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 not entitled to benefits beginning February 4, 2024.

G.L. c. 151A, § 24(b), 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 concluded that the limitations on the claimant's availability for work and work search effectively removed him from the labor market. She erred in coming to this conclusion.

There is nothing in the record to show that the claimant had any limitations on the hours he could work during the period beginning February 4, 2024. Thus, we can reasonably infer that he has been available to work full-time.

The claimant has not had any limitations on the work he can perform due to his health or physical condition since February 4, 2024, although his ability to get to a worksite is limited since he does not drive. *See* Findings of Fact ## 1 and 4. Contrary to the review examiner's findings, the claimant provided uncontested testimony that, in addition to working remotely, he has been able to work in person at worksites he could get to via public transportation.¹ Given the claimant's line of work, which he has demonstrated can be performed remotely, and his ability to continue to do so, these limitations on the claimant's ability to work do not effectively remove him from the labor market.

Also contrary to the review examiner's findings, the claimant provided uncontested testimony that he has been applying for jobs he could perform remotely as well as get to via public transportation. As the claimant has been looking for work three times a week since February 4, 2024, he meets the DUA's criteria for an active work search. *See* Finding of Fact # 5 and the DUA Adjudication Handbook, Ch. 4, § 4B.

We, therefore, conclude as a matter of law that the claimant has met his burden to show that he met the eligibility requirements to be capable of, available for, and actively seeking work within the meaning of G.L. c. 151A, § 24(b).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning February 4, 2024, and for subsequent weeks if otherwise eligible.

¹ While not explicitly incorporated into the review examiner's findings, this part of the claimant's testimony 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).

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 26, 2024



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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.

REB/rh