

The claimant, who pinched a nerve in his neck, presented showed he was physically capable of performing light duty work. He also established that he was available for and actively seeking full-time second shift work while attending a full-time HVAC training program. Held he is eligible for benefits under G.L. c. 151A, § 24(b).

**Board of Review
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Issue ID: 0082 3101 25

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 February 25, 2024, which was denied in a determination issued on March 21, 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 4, 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 nor actively seeking full-time work, and, thus, he 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 for additional evidence pertaining to the claimant's ability to work and his work search efforts. Following an additional hearing, 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 original decision, which concluded that the claimant was disqualified because he was neither capable of working nor actively seeking employment due to a pinched nerve in his neck, 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 filed a new claim for unemployment benefits on 3/1/24.
2. The claimant was medically cleared to return to work with limitations as of the week beginning 2/25/24 through week ending 6/8/24.

3. The claimant was medically cleared with medical restrictions. He could perform light duty work (no lifting more than 10 pounds, no bending or twisting, no pushing or pulling, no sitting or standing for any length of time without breaks).
4. Although the claimant was capable of working full-time with these limitations, he was unable to find suitable employment that fit his restrictions during this period. He sought work that accommodated his school schedule, such as second-shift positions.
5. On the second day of his employment, the claimant returned home, fell, and injured his shoulder. He informed his employer, who advised him to rest and seek medical attention.
6. The claimant experienced numbness and pain in his arm which impacted his ability to work.
7. The claimant visited his doctor for the shoulder injury around 1/31/24. The doctor took him off work on that date and provided a statement on 3/4/24, indicating his inability to work as of 2/25/24.
8. The claimant's doctor referred him to a mobility specialist, whom he saw during the first week of March 2024. An MRI performed on 3/26/24 revealed a pinched nerve in his neck.
9. The claimant began physical therapy for his injury and was fully cleared to return to work without restrictions as of 6/14/24.
10. During the weeks beginning 2/25/24 through week ending 6/29/24, the claimant actively searched for full-time work and provided work search logs of his searches during this time.
11. The claimant received eight job offers between March and July 2024. These offers came during the first and last weeks of March, three times in April, twice in May, and once in July. He declined these offers due to the employers' expectations, which included quotas he could not meet.
12. The claimant has been enrolled in full-time HVAC training since 1/8/24, with classes held Monday through Thursday from 8:00 a.m. to 2:45 p.m., and some Fridays for makeup or extra credit.
13. The claimant completed the HVAC program on 4/8/24 earning his HVAC Certification and Universal EPA license.
14. Despite being a full-time student, the claimant was available for full-time work, specifically during second shifts. In January 2024, he worked full-time on second shifts while attending school full-time.

15. The HVAC program he completed is assisting the claimant in finding an apprenticeship program. He is currently on a waiting list for placement.

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 findings of fact and deems them to be supported by substantial and credible evidence, although we note that Consolidated Finding # 1 refers to the date the claimant filed for benefits. The effective date of his claim is February 25, 2024. However, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant was ineligible 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 claimant bears the burden of proof of establishing he 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.”). For each week that he claims benefits, he must be physically capable of, available for, and actively seeking full-time work.¹

First, we consider whether the evidence shows that the claimant was physically capable of working. The consolidated findings indicate that the claimant suffered from a pinched nerve in his neck as a result of a fall he suffered at his home. *See Consolidated Findings ## 5, 6, and 8.* Because of his injury, the claimant was unable to work in any capacity beginning January 31, 2024. *See Consolidated Finding # 7.* The claimant's medical provider subsequently cleared him to return to full-time work in a light duty capacity beginning February 25, 2024. The medical provider lifted this restriction on June 16, 2024. *See Consolidated Findings ## 2, 3, and 9.* During this period, the review examiner found that the claimant was capable of performing light duty work, and that, although he was seeking employment within his medical restrictions, he was unable to find suitable employment. *See Consolidated Finding # 4.*

During the course of the hearings in this matter, the review examiner entered the claimant's work search logs into the record. These logs indicate that the claimant applied for positions as a maintenance or repair technician, assembler, cashier or machinist.² We see nothing in the record

¹ *See* G.L. c. 151A, §§ 1(r)(1) and (2), 29(a) and (b), which reflect the Legislature's expectation that an unemployed worker will only be eligible for benefits if one is unable to obtain full-time work.

² The claimant's work search logs, marked as Remand Exhibits ## 13 and 14, and as further referenced in this decision, are part of the unchallenged evidence introduced at the hearing and placed in the record, and they are thus properly

that indicates that the claimant's physical limitations precluded him from working in such positions. The record further indicates that the claimant rejected those offers not because he was unable to perform the work due to the physical limitations imposed, but rather because he was unable to perform the work fast enough to meet the employer's expectations. *See Consolidated Finding # 11.* As such, we conclude that the claimant became physically capable of performing full-time work on February 25, 2024.

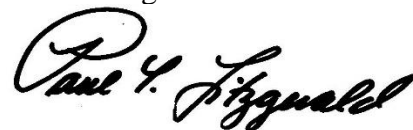
Next, the claimant must also show that he was actively seeking employment. Consolidated Findings ## 4, 10, and 15 show that the claimant was actively seeking work and maintaining a work search log. The work search logs show that the claimant was performing three work search activities each week from the effective date of his claim, February 25, 2024, through August 28, 2024. Thus, the claimant has established that he was actively seeking work within the meaning of G.L. c. 151A, § 24(b), starting the week of February 25, 2024.

Finally, the claimant must show he was available for full-time work. Prior to his injury and before his separation from his last employment, the claimant enrolled in a full-time HVAC training program. The training program ran from January 8, 2024, until April 8, 2024, Monday through Thursday from 8:00 a.m. to 2:45 p.m. with occasional Fridays. *See Consolidated Findings ## 7, 12, and 13.* We note that, during the month of January, the claimant has demonstrated a history of attending school full-time and working full-time. Moreover, after the claimant separated from his employment, he continued to seek and be available for full-time, second-shift work while continuing with the training program. *See Consolidated Findings ## 7 and 14.* There is nothing in the findings that suggests that the claimant could not work eight hours each day while he was in school. Given these facts, the evidence indicates that the claimant has demonstrated that he was available for full-time work while attending school.

We, therefore, conclude as a matter of law that the claimant has met his burden to show that he was capable of, available for, and actively seeking full-time work within the meaning of G.L. c. 151A, § 24(b), beginning February 25, 2024, and thereafter.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending March 2, 2024, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 2, 2024



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

Member Charlene A. Stawicki, Esq. did not participate in this decision.

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).

**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