

Pursuant to G.L. c. 151A, § 24(b), the claimant was ineligible for benefits for following her C-section, when she was medically unable to work.

**Board of Review
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Issue ID: 0082 5092 19

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 we affirm in part and reverse in part.

The claimant filed a claim for unemployment benefits with the DUA, effective March 24, 2024. On April 19, 2024, the DUA issued a determination denying benefits indefinitely beginning March 31, 2024. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by the claimant, the review examiner modified the agency's initial determination and denied benefits only for the week beginning March 31, 2024, through the week ending June 29, 2024, in a decision rendered on May 9, 2024. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not capable of, or available for, work during the week beginning March 31, 2024, through the week ending June 29, 2024, 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 take additional evidence regarding the claimant's capability of, and availability for, work. The claimant attended 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 from March 31, 2024, to June 29, 2024, because she was not able or available to work due to recovering from childbirth and caring for her baby, 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 and credibility assessment are set forth below in their entirety:

1. Prior to filing for benefits, the claimant worked as a full-time manager for a technology company.

2. The claimant filed a claim for unemployment benefits effective March 24, 2024.
3. On April 4, 2024, the claimant gave birth to her baby (baby) by C-section. After she gave birth, the claimant was not physically capable of working again until May 16, 2024.
4. During the week beginning March 31, 2024, through the week ending May 18, 2024, the claimant was not able to or available for work because she was recovering from childbirth and caring for her newborn baby.
5. Since the week beginning May 19, 2024, and subsequent weeks, the claimant has had no restrictions on her physical and mental ability to work.
6. During the week beginning May 19, 2024, and subsequent weeks, the claimant's father was available to care for the baby, if the claimant was offered a full-time job.
7. Since the week beginning May 19, 2024, and subsequent weeks, the claimant has placed no limitations on her availability to work a full-time schedule.
8. During the week beginning March 31, 2024, and subsequent weeks, the claimant searched for work. The claimant performed work search activities approximately seven (7) days each week. The claimant searched online for job opportunities and submitting [sic] employment applications.
9. The claimant began a new full-time job on July 29, 2024.

Credibility Assessment:

During the remand hearing, the claimant provided forthcoming and consistent testimony regarding her capability, availability, and search for employment. During the remand hearing, the claimant testified and provided documentary evidence that she was cleared to return to work on May 16, 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 Consolidated Finding # 4 insofar as it states that the claimant was not available for work during the week beginning March 31, 2024, through the week ending May 18, 2024. This portion of the finding is inconsistent with the claimant's uncontested testimony regarding the childcare that was available to her. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. We further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented. However, as discussed

more fully below, we reject the review examiner’s legal conclusion that the claimant was ineligible for benefits during the entirety of the period at issue.

The claimant was disqualified pursuant to 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. . . .

Under G.L. c. 151A, § 24(b), the burden of proof is on the claimant. *See Evanchov. 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).

We first consider whether the claimant has shown that she was able, available, and actively seeking work during the week beginning March 31, 2024. Her eligibility for this week depends on the number of days she was capable of working. *See* Board of Review Decision 0079 4611 99 (October 18, 2023), *citing* Board of Review Decision 0066 4492 59 (September 29, 2022). The claimant’s C-section was performed on Thursday, April 4, 2024. *See* Consolidated Finding # 3. Nothing in the record indicates that the claimant was unable to work during the first four of the seven days of this week. Since she was able to work during a majority of the days of this week, she met the capability requirement of G.L. c. 151A, § 24(b).

Further, nothing in the record indicates that the claimant had any limitations on her availability that would have prevented her from working full-time during this week.¹ She performed work search activities on approximately seven days during this week. *See* Consolidated Finding # 8. This exceeds the DUA’s criteria that claimants complete at least three work search activities a week to meet the active work search requirement. *See* DUA Adjudication Handbook, Ch. 4, § 4B.

Next, we consider whether the claimant met the requirements of G.L. c. 151A, § 24(b), during the week beginning April 7, 2024, through the week ending May 18, 2024. Following her C-section on April 4, 2024, the claimant was not medically cleared to return to work until she had her six-week clearance appointment on May 16, 2024. *See* Consolidated Finding # 3.² Since she was not medically capable of working, she is ineligible for benefits during this period.

Finally, we consider whether the claimant has shown that she has been able, available, and actively seeking work from the week beginning May 19, 2024, through the week ending June 29, 2024. During this period, the claimant did not have any restrictions on her physical or mental ability to work. *See* Consolidated Finding # 6. She did not have any limitations on her availability to work

¹ 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.

² We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. *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).

full-time. *See Consolidated Finding # 7.* She also continued to look for work seven days a week. *See Consolidated Finding # 8.*

We, therefore, conclude as a matter of law that the claimant met the requirements of G.L. c. 151A, § 24(b), for the week beginning March 31, 2024, and from the week beginning May 19, 2024, through the week ending June 29, 2024. However, she did not meet her burden to show that she was capable of work during the week beginning April 7, 2024, through the week ending May 18, 2024.

The review examiner's decision is affirmed in part and reversed in part. The claimant is ineligible for benefits from April 7, 2024, through May 18, 2024. However, the claimant is entitled to benefits for the week beginning March 31, 2024, and during the period May 19, 2024, through June 29, 2024, 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.

REB/rh