

Due to a fractured ankle, the claimant physical therapist's doctor restricted her to remote work, initially part-time, then full-time, during her benefit year. Through medical documentation and a detailed work search log, the claimant demonstrated that she was capable of, available for, and actively seeking suitable work despite her disability. She met the eligibility criteria for benefits pursuant to G.L. c. 151A, § 24(b) and 430 CMR 4.45(3).

**Board of Review
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Issue ID: 0082 7544 16

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 March 31, 2024, which was denied in a determination issued on May 10, 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 June 11, 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 and, thus, she was disqualified pursuant to 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 further evidence about the claimant's ability to perform remote work and her work search efforts. The claimant participated in the remand hearing with counsel. 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 by limiting her availability to remote work, the claimant was ineligible for benefits because she had effectively removed herself from the labor force, 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. The claimant filed a claim for unemployment insurance benefits effective March 31, 2024, with a benefit year end of March 29, 2025. The Department

of Unemployment Assistance (“DUA”) calculated the claimant’s weekly benefit amount as \$955.00, with an earnings disregard of \$318.33.

2. The claimant did not serve a waiting week.
3. The claimant has a history of working in the medical and food service industry.
4. The claimant has no experience working remotely.
5. The claimant has a Master’s Degree in physical therapy.
6. On January 23, 2019, the claimant began working as a full-time physical therapist for a healthcare organization (“employer A”).
7. On October 23, 2023, the claimant suffered an open fracture on her right ankle that caused the claimant pain, prevented her from being able to stand on the foot, caused her to use crutches and a wheelchair, and prevented her from being able to drive.
8. Following the claimant’s October 23, 2023, ankle injury, employer A placed the claimant on a leave of absence as she was unable to return to her employment, as she could not drive to work and could not stand on her foot.
9. Upon the claimant being medically cleared to return to her employment, employer A will have work available.
10. On March 15, 2024, the claimant began working for her husband’s record management company (“employer B”) as a remote sales assistant earning approximately \$20.00 per hour, on an as-needed basis.
11. During the week of March 24, 2024, through March 30, 2024, the claimant worked 5 hours for employer B and earned \$100.00 in gross wages.
12. From the week of March 31, 2024, through the week ending May 18, 2024, the claimant did not work for employer B as the claimant’s services were not needed.
13. During the week of May 19, 2024, through May 25, 2024, the claimant worked 12 hours for employer B, earned \$252.00 in gross wages and reported the wages to the DUA when she certified for weekly unemployment benefits.
14. During the week of May 26, 2024, through June 1, 2024, the claimant worked 11 hours for employer B, earned \$231.00 in gross wages and reported the wages to the DUA when she certified for weekly unemployment benefits.

15. During the week of June 2, 2024, through June 8, 2024, the claimant worked 10 hours for employer B, earned \$200.00 in gross wages and reported the wages to the DUA when she certified for weekly unemployment benefits.
16. During the week of June 9, 2024, through June 15, 2024, the claimant worked 7.5 hours for employer B, earned \$150.00 in gross wages and reported the wages to the DUA when she certified for weekly unemployment benefits.
17. During the week of June 16, 2024, through June 22, 2024, the claimant worked 5 hours for employer B, earned \$100.00 in gross wages and reported the wages to the DUA when she certified for weekly unemployment benefits.
18. During the week of June 23, 2024, through June 29, 2024, the claimant worked 6 hours for employer B, earned \$120.00 in gross wages and reported the wages to the DUA when she certified for weekly unemployment benefits.
19. During the week of June 30, 2024, through July 6, 2024, the claimant did not work for employer B as the claimant's services were not needed.
20. During the week of July 7, 2024, through July 13, 2024, the claimant worked 10 hours for employer B, earned \$200.00 in gross wages and reported the wages to the DUA when she certified for weekly unemployment benefits.
21. During the week of July 14, 2024, through July 20, 2024, the claimant worked 7 hours for employer B, earned \$140.00 in gross wages and reported the wages to the DUA when she certified for weekly unemployment benefits.
22. During the week of July 21, 2024, through July 27, 2024, the claimant worked 5 hours for employer B, earned \$100.00 in gross wages and reported the wages to the DUA when she certified for weekly unemployment benefits.
23. During the week of July 28, 2024, through August 3, 2024, the claimant did not work for employer B as the claimant's services were not needed.
24. During the week of August 4, 2024, through August 10, 2024, the claimant worked 7 hours for employer B, earned \$140.00 in gross wages and reported the wages to the DUA when she certified for weekly unemployment benefits.
25. During the week of August 11, 2024, through August 17, 2024, the claimant worked 7 hours for employer B, earned \$140.00 in gross wages and reported the wages to the DUA when she certified for weekly unemployment benefits.
26. During the week of August 18, 2024, through August 24, 2024, the claimant worked 9 hours for employer B, earned \$180.00 in gross wages and reported the wages to the DUA when she certified for weekly unemployment benefits.

27. During the week of August 25, 2024, through August 31, 2024, the claimant worked 10 hours for employer B, earned \$200.00 in gross wages and reported the wages to the DUA when she certified for weekly unemployment benefits.
28. During the week of September 1, 2024, through September 7, 2024, the claimant worked 10 hours for employer B, earned \$200.00 in gross wages and reported the wages to the DUA when she certified for weekly unemployment benefits.
29. During the week of September 8, 2024, through September 14, 2024, the claimant worked 1 hour for employer B, earned \$20.00 in gross wages and reported the wages to the DUA when she certified for weekly unemployment benefits.
30. During the week of September 15, 2024, through September 24, 2024, the claimant worked 1 hour for employer B, earned \$20.00 in gross wages and reported the wages to the DUA when she certified for weekly unemployment benefits.
31. The claimant's last physical date of employment with employer B was September 15, 2024.
32. The claimant's "Health Care Provider's Statement of Capability" dated May 13, 2024, indicated the claimant has been medically cleared to work full-time in a remote employment capacity only as of May 1, 2024, due to the claimant's inability to stand for prolonged periods of time.
33. Since the week beginning March 31, 2024, the claimant has been medically capable of remote part-time employment.
34. Since the week beginning March 31, 2024, the claimant has been available for part-time remote employment.
35. Since the week beginning March 31, 2024, the claimant has not been medically cleared to return to in-person employment, due to her fractured ankle.
36. Since the week beginning April 28, 2024, the claimant has been medically capable of remote full-time employment.
37. Since the week beginning April 28, 2024, the claimant has been available for full-time remote employment.
38. From the week beginning March 31, 2024, through the week ending September 7, 2024, the claimant was searching for full-time physical therapy remote employment by completing a minimum of three (3) weekly work searches by searching websites such as indeed, linkedIn, ladders, monster, and google, as well as searching specific hospital websites.

39. On September 4, 2024, the claimant received an offer of full-time remote employment as a physical therapist for a healthcare company (“employer C”).
40. On September 4, 2024, the claimant accepted the offer of full-time employment with employer C.
41. Since the week beginning September 8, 2024, the claimant did not search for employment due to obtaining new full-time employment with employer C.
42. On September 23, 2024, the claimant began her new full-time employment with employer C.
43. As of the date of the hearing (December 6, 2024), the claimant is still employed with employer C.
44. On May 10, 2024, the DUA sent the claimant a Notice of Disqualification stating she was disqualified from receiving unemployment benefits for the period week beginning March 31, 2024, and indefinitely thereafter, as she did not meet the capability requirements of Section 24(b) of the Law.

Credibility Assessment:

The claimant provided contradictory testimony regarding her experience with remote employment. During the original hearing, the claimant testified that she did not have experience with remote employment, but during the remand hearing, the claimant testified that she did have experience working remotely between April 2020 and May 2021. Furthermore, in the claimant’s appeal to the original hearing decision, the appeal states in part, “Just because someone had never done remote work...” As such, it is concluded the claimant’s contradictory testimony is deemed not credible, and that the claimant did not have experience with remote employment.

The claimant provided credible and consistent testimony regarding her as-needed employment with employer B, including the weekly hours she worked, and her weekly gross earnings from March 15, 2024, through September 15, 2024.

The claimant provided further credible and consistent testimony that from the week beginning March 24, 2024, through the week ending September 7, 2024, she searched for full-time remote employment. In support of her testimony, the claimant provided her work search logs from March 24, 2024, through September 7, 2024, as well as correspondence with potential employers.

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. After such review, the Board adopts the review examiner's consolidated findings of fact except as follows. We reject Consolidated Finding # 4, as this conflicts with Consolidated Findings ## 10 – 30. We also reject the portion of Consolidated Finding # 38, which indicates that the claimant's work search was limited to physical therapy remote employment, as it is unsupported by 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 disagree with the review examiner's legal conclusion that the claimant is ineligible for benefits.

At issue in this case is the claimant's eligibility 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), claimants are expected to be capable of, available for, and actively search for full-time work.¹ However, DUA regulations allow an individual to limit her availability to part-time work under certain circumstances. Specifically, 430 CMR 4.45, provides, in relevant part, as follows:

(3) Notwithstanding the provisions of 430 CMR 4.45(1), an otherwise eligible individual who does not meet the requirements of 430 CMR 4.45(1) may limit his/her availability for work during the benefit year to part-time employment provided, that the individual is:

(a) a qualified individual with a disability;

(b) provides documentation to the satisfaction of the commissioner substantiating an inability to work full-time because of such disability; and

(c) establishes to the satisfaction of the commissioner that such limitation does not effectively remove himself/herself from the labor force.

DUA's regulation 430 CMR 4.44 sets out the definitions pertinent to 430 CMR 4.45(3):

Disability means a physical or mental impairment that substantially limits a major life activity of such individual; ...

Major Life Activities means functions including but not limited to caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, the operations of major bodily functions, and *working*. . . .

¹ 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.

Qualified Individual with a Disability means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or for the participation in programs or activities provided by a public entity.

(Emphasis added.)

In the present case, Consolidated Findings ## 7 and 8 provide that due to an ankle injury on October 23, 2023, the claimant was forced to stop working at her existing physical therapist job because she was unable to stand on her foot or drive. Medical evidence shows that from the effective date of her claim, March 31, 2024, through the week ending April 27, 2024, her doctor restricted her to part-time remote work. *See* Consolidated Findings ## 33, 35, and 36. Thereafter, her doctor released her to perform full-time remote work. *See* Consolidated Finding # 37. Accordingly, the claimant was available only for part-time work for the first few weeks of her claim. *See* Consolidated Findings ## 34 and 37.

These findings establish that she was a qualified individual with a disability, who provided medical documentation substantiating her inability to work full-time because of that disability for the period March 31 – April 27, 2024. In his original decision, the review examiner disqualified the claimant when she was only available for part-time work, because he concluded that the claimant failed to meet the third criteria to show that her disability did not effectively remove her from the labor force. *See* 430 CMR 4.45(3)(c). Moreover, he extended the disqualification indefinitely, even after she became available for full-time work, because he concluded that restricting her availability to remote work throughout her claim had the effect of removing her from the labor force. In light of the record after remand, we disagree.

There is no question that due to the claimant's ankle injury, she could not drive to work or stand on her feet. *See* Consolidated Finding # 7. Consequently, she could no longer perform her prior in-person physical therapy duties. *See* Consolidated Finding # 8. Notwithstanding the statement in Consolidated Finding # 4 about the claimant's lack of remote work experience, the record shows that the claimant was able and available to work remotely from home, initially part-time, then full-time.

In his credibility assessment, the review examiner concludes that the claimant had no remote employment experience. Such assessments are within the scope of the fact finder's role and unless they are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. *See School Committee of Brockton v. Massachusetts Commission Against Discrimination*, 423 Mass. 7, 15 (1996). "The test is whether the finding is supported by 'substantial evidence.'" *Lycurgus v. Dir. of Division of Employment Security*, 391 Mass. 623, 627 (1984)(citations omitted.) "Substantial evidence is 'such evidence as a reasonable mind might accept as adequate to support a conclusion,' taking 'into account whatever in the record detracts from its weight.'" *Id.* at 627-628, *quoting New Boston Garden Corp. v. Board of Assessors of Boston*, 383 Mass. 456, 466 (1981)(further citations omitted.)

Although the claimant did present conflicting statements about her prior remote work experience, the record now shows that she *was* performing remote sales assistant work for her husband's record management company from March 15 – September 15, 2024. *See* Consolidated Findings ## 10 – 31. Given these findings, the notion that any lack of remote work experience rendered her unsuited to perform remote work during her benefit year is unreasonable in relation to the evidence presented.

Finally, we consider whether the claimant has met her burden to demonstrate that she was actively seeking work in her usual occupation or any other occupation for which she is reasonably fitted. 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. *See* DUA Adjudication Handbook (revised Mar. 1, 2020), Chapter 4, § 4(A)(1). Claimants have the burden to show that their continued unemployment is not due to their own lack of diligence. *See* Evancho v. Dir. of Division of Employment Security, 375 Mass. 280, 282–283 (1978) (citations omitted).

To be sure, the claimant's usual occupation of physical therapy, by its nature, is a hands-on profession, which raises the question of how many remote physical therapy jobs exist in the labor force. The fact that the claimant did obtain such a position in September is some evidence that remote physical therapy work exists. *See* Consolidated Findings ## 39 and 40. A careful look at the record includes evidence that she was also seeking and applying for other types of remote work, including, *e.g.*, remote clinical operations, medical transcription, travel agent, and work for an insurance company.² This evidence renders the portion of Consolidated Finding # 38, which indicates the claimant searched only for physical therapy remote work, unreasonable in relation to the evidence presented. Given the claimant's experience in the medical field and, apparently, successful ability to perform sales assistant work remotely, she has demonstrated that she was searching for suitable work. *See* Consolidated Findings ## 3 and 10 - 30. Further, the record shows that she had not limited her work search so as to effectively remove herself from the labor force.

We, therefore, conclude as a matter of law that the claimant has met her burden to show that she was capable of, 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 receive benefits for the period beginning March 31, 2024, and for subsequent weeks, if otherwise eligible.

² The claimant presented both testimony and a work search log, Remand Exh. 6, showing that she had both searched and applied for such other jobs during various weeks in her benefit year. 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).

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 26, 2024



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

Member Charlene A. Stawicki, 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.

AB/jv