

**Although medically unable to work for three weeks due to surgery, the claimant had been capable of, available for, and actively seeking work during the benefit year week before his surgery. Since this week followed his separation from employment, he was entitled to benefits for those three weeks due to illness pursuant to G.L. c. 151A, § 24(c).**

**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: 0083 3070 94**

### 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 became separated from employment and filed a claim for unemployment benefits with the DUA, effective July 7, 2024, which was denied between July 14, 2024, and August 3, 2024, in a determination issued on August 6, 2024. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by the claimant, the review examiner affirmed the agency's initial determination and denied benefits for those three weeks, in a decision rendered on August 28, 2024. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not capable of, available for, or actively seeking work during those weeks, 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. The claimant attended the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact and credibility assessment. 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 claimant was ineligible for benefits because he was not capable of, available for, or actively seeking work during the three weeks at issue, is supported by substantial and credible evidence and is free from error of law, where the consolidated findings after remand show that the claimant had been medically capable of working during the week prior to his surgery, then was medically cleared for part- and then full-time work by his physician two weeks after surgery.

### 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 was working as a full-time electronic engineer for [a] government defense company.
2. The claimant filed a claim for unemployment benefits effective July 7, 2024.
3. During the week beginning July 7, 2024, the claimant had no restrictions on his physical and mental ability to work.
4. During the week beginning July 7, 2024, the claimant did not place any limitations on his availability to work full time.
5. During the week beginning July 7, 2024, the claimant searched for work at least three times per week, by utilizing online job search engines such as Indeed and ZipRecruiter.
6. The claimant had gall bladder surgery on July 15, 2024. The claimant was hospitalized until July 19, 2024.
7. The claimant submitted letters from both his surgeon and primary care physician (PCP). The claimant's surgeon indicated that the claimant could have returned to work on August 1, 2024, while his PCP indicated that he could have returned to work on August 2, 2024. Both medical professionals restricted the claimant from lifting heavy items greater than 15 pounds until at least August 12, 2024.
8. During the week beginning July 14, 2024, through the week ending August 3, 2024, the claimant was unable to work because he had gall bladder surgery on July [15], 2024, and was recovering from the surgery and his doctors restricted him from working until at least August 1, 2024.
9. During the week beginning July 14, 2024, through the week ending August 3, 2024, the claimant was not available for work because he was in the hospital until July 19, 2024, after which he was focusing on his recovery.
10. During the week beginning July 14, 2024, the claimant did not search for work, because of his medical condition.
11. During the week beginning July 21, 2024, through the week ending August 3, 2024, the claimant searched for work at least three (3) times per week, by utilizing online job search engines and companies' websites.
12. The claimant was not offered any work during the week beginning July 7, 2024, through the week ending August 3, 2024.

Credibility Assessment:

During the remand hearing, the claimant provided forthcoming and consistent testimony regarding his capability, availability and search for employment between July 7, 2024, and August 3, 2024. During the remand hearing, the claimant testified that he was capable of, available for and actively seeking work during the week beginning July 7, 2024. During the remand hearing, the claimant provided two separate healthcare documents, one from his surgeon and one from his primary care physician. The evidence established that the claimant was expected to remain out [sic] work until at least August 1, 2024. The claimant testified that he was not offered any work between July 7, 2024, and August 3, 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 and deems 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, we do not agree that the claimant is ineligible for the three weeks of benefits from July 14, 2024, through August 3, 2024, as outlined below.

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. . . .

In her initial decision, the review examiner disqualified the claimant, concluding that he was not medically capable of working during the week beginning July 14, 2024, because he had surgery on July 15, 2024, and was thereafter recovering from his surgery. The review examiner's decision ended the disqualification as of August 3, 2024, however. We remanded the case to take additional evidence regarding the claimant's capability of, availability for, and efforts to find suitable employment as of the effective date of his claim, which is July 7, 2024.

After remand, the review examiner found that, during the week beginning July 7, 2024, the claimant was physically and mentally capable of working, he had no limitations on his availability for full-time work, and he searched for work at least three times that week. *See Consolidated Findings ## 3–5.*

The claimant had surgery on July 15, 2024, for which he was hospitalized through July 19, 2024. *See Consolidated Finding # 6.* Following his surgery and hospitalization, the claimant was neither physically capable of, nor available for, full-time work during the three weeks from July 14, 2024, through August 3, 2024. *See Consolidated Findings ## 8–9.* Although the claimant did not search for work during the week beginning July 14, 2024, he resumed looking for work at least three times per week beginning the week of July 21, 2024. *See Consolidated Findings ## 10–11.*

However, the claimant's medical providers submitted documentation confirming that the claimant became capable of working again, with a restriction limiting him from lifting more than 15 pounds, effective the week beginning August 4, 2024. *See Consolidated Finding # 7.*

For the claimant's eligibility for benefits from July 14, 2024, through August 3, 2024, our analysis must consider G.L. c. 151A, § 24(c), which states, in relevant part, as follows:

No individual shall be considered ineligible for benefits because of failure to comply with the provisions of said clause (b) if such failure is due to an illness or disability which occurs during a period of unemployment after he has filed a claim and registered for work, and has been determined to be otherwise eligible; provided that no work which would have been considered suitable but for such illness or disability was offered to him after he became ill or disabled; provided further, that the exception granted under this paragraph shall apply to three weeks only within a benefit year.

The U.S. Department of Labor has promulgated a regulation, which limits a state agency's ability to award illness weeks. Specifically, 20 CFR § 604.4(b) states:

*If an individual has previously demonstrated his or her ability to work and availability for work following the most recent separation from employment, the State may consider the individual able to work during the week of unemployment claimed despite the individual's illness or injury, unless the individual has refused an offer of suitable work due to such illness or injury.*

(Emphasis added.)

Here, the claimant's separation from employment occurred on May 18, 2024. *See* Hearings Exhibit # 10.<sup>1</sup> He filed his claim for benefits that was effective July 7, 2024. After remand, the review examiner's consolidated findings support a conclusion that he was capable of, available for, and actively seeking work during the first week of his unemployment claim. *See Consolidated Findings ## 3–5.* This means that he demonstrated an ability to work after his separation, at least during the first week of his claim for benefits, which began on July 7, 2024. The claimant certified for benefits during this week, which DUA properly considered to be his waiting week.<sup>2</sup>

The review examiner issued a credibility assessment that the claimant was capable of, available for, and actively seeking work during the week beginning July 7, 2024. Her credibility assessment also noted that the claimant provided documentary evidence corroborating that his period of incapability ended by the week ending August 3, 2024. Such assessments are within the scope of the fact finder's role, and, unless they are unreasonable in relation to the evidence presented, they

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<sup>1</sup> Hearings Exhibit # 10 is a summary of the claimant's responses to DUA questions when he filed his claim for benefits effective July 7, 2024. While not explicitly incorporated into the review examiner's consolidated findings, it 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).

<sup>2</sup> We note that the claimant's certification for benefits that week is contained in his weeks claimed summary, available to us through the DUA's UI Online electronic database.

will not be disturbed on appeal. *See School Committee of Brockton v. Massachusetts Commission Against Discrimination*, 423 Mass. 7, 15 (1996). We believe that her assessment is reasonable in relation to the record.

While the claimant became incapable of and unavailable for work due to his surgery on July 15, 2024, this period of incapability and unavailability lasted only for three weeks. Thereafter, the claimant was medically cleared by his doctors to resume full-time work (with restrictions) as of August 4, 2024. Since the claimant had been capable of, available for, and actively seeking work during the first week of his claim for benefits, he met the requirement to be paid for the three weeks while he recovered from surgery.

We, therefore, conclude as a matter of law that the claimant is entitled to three weeks of benefits pursuant to G.L. c. 151A, § 24(c).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the three weeks between July 14, 2024, and August 3, 2024, as well as for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - January 16, 2025**



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](http://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.

JPCA/rh