

The claimant established that she was capable of, available for, and actively seeking suitable part-time work. The claimant had to work part-time for her last employer for the same medical reasons that she could only work part-time during her benefit year, and she demonstrated that she has been actively seeking the type of sedentary part-time work that she can do with this limitation. As such, she is eligible for benefits pursuant to G.L. c. 151A, § 24(b) and 430 CMR 4.45.

**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 8422 80

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 August 4, 2024, which was denied in a determination issued on October 16, 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 in a decision rendered on November 8, 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 and, thus, was disqualified under G.L. c. 151A, § 24(b). 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 ineligible for benefits because, due to her medical condition, she was not available for or seeking full-time employment, 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. The claimant filed a new claim for unemployment benefits on 8/8/24.
2. On 8/4/24, the effective date of the claim, the claimant was not capable of working due to an injury she sustained on 7/4/23. The claimant had a hip replaced and a rod put into her femur due to a cancer lesion.

3. The claimant's doctor provided her a doctor's note, dated 9/26/24, that she was unable to work because of an inability to walk or stand for extended periods of time. The same doctor completed a Healthcare Statement of Capability on 9/30/24 stating the claimant became unable to work as of 7/7/23 and would not be capable of full-time work until she was reevaluated at her appointment on 11/20/24. Another note was provided by this doctor on 11/4/24 and stated that the claimant could return to sedentary work as of this date because she is unable to stand for long periods of time.
4. The claimant has not been capable of working full time from the time of filing through the present.
5. The claimant had been hired as a full-time employer [sic] by her most recent employer. She worked full-time until she was placed out of work by her doctor from 7/4/23 until 12/1/23. She returned to work with this employer as of 12/18/23 and worked part time until she was laid off on 7/18/24.
6. The claimant has been capable of performing only part-time sedentary work.
7. The claimant is searching for part time receptionist/secretarial desk jobs on a daily basis both online and in person. She is only capable of working part-time.

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 original conclusion is free from error of law. After such review, the Board adopts the review examiner's findings of fact except as follows. We reject Finding of Fact # 2, as it is inconsistent with Findings of Fact ## 5 and 6. As discussed more fully below, we also reject the review examiner's legal conclusion that the claimant is not eligible 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 review examiner's original decision disqualified the claimant because she was not capable of, or actively seeking, full-time work. Ordinarily, to be eligible for benefits, a claimant must be available for, and capable of, full-time work.¹ There are a limited number of circumstances set

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.

forth under 430 CMR 4.45 when claimants are permitted to restrict their availability to part-time work. These regulations state, in relevant part, as follows:

(1) An individual otherwise eligible for benefits may limit his/her availability for work during the benefit year to part-time employment provided, that the individual . . .

(a) has a prior work history of part-time employment; establishes to the satisfaction of the commissioner good cause for restricting availability during the benefit year to part-time employment and that such good cause reason is the same as, or is related to what existed during the prior work history of part-time employment; and is available during the benefit year for at least as many hours of work per week as used to establish the prior work history of part-time employment; . . .

(4) Any individual who meets the requirements of either 430 CMR 4.45(1) or (3) must be actively seeking and available for suitable work to be eligible for benefits. An offer of employment will not be considered an offer of suitable employment, and the individual will not be disqualified for refusing such offer where such offer:

a. in the case of an individual who meets the requirements of 430 CMR 4.45(1)(a) requires greater hours than those used to establish the individual's prior work history of part-time employment; or

b. in the case of an individual who meets the requirements of 430 CMR 4.45(3) requires greater hours than the individual is capable of working.

The record shows that the claimant was working full-time for many years when she suffered an injury on July 4, 2023, which caused her to have a hip replacement, and a rod put into her femur due to a cancer lesion. Findings of Fact ## 2 and 5. After the injury, the claimant was only capable of working part-time. Findings of Fact ## 6 and 7. She returned to work with the same employer on a part-time basis on December 18, 2023, and worked there part-time until she was laid off on July 18, 2024. Finding of Fact # 5. Further, the claimant testified that she worked 16–18 hours per week when she returned to her employer on December 18, 2023, and she was available for 16–18 hours per week in her benefit year.²

The record also provides that the claimant had to limit her availability to part-time work both while working in her prior job and during the benefit for the same reason. The injury that she suffered and the surgery to replace her hip has rendered her capable of performing only part-time sedentary work. Findings of Fact ## 2, 6, and 7. Together, these facts satisfy the requirements under 430 CMR 4.45(1)(a).

² This portion of the claimant's testimony, as well as the portion referenced below, are not explicitly incorporated into the review examiner's findings. However they are part of the unchallenged evidence introduced at the hearing and placed in the record, and they are 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).

Next, we consider whether the claimant has proven that she met the requirements of 430 CMR 4.45(4), to be actively seeking and available for suitable work. The claimant testified that, in her most recent job, she had been a medical receptionist. Her medical doctors determined that she was only capable of sedentary work. *See* Findings of Fact ## 3 and 6. Finding of Fact # 7 states that the claimant was searching for part-time receptionist and secretarial desk jobs. Such jobs are self-evidently sedentary-type positions. Moreover, she looked for this work on a daily basis. Finding of Fact # 7. These facts show that the claimant was actively seeking suitable work during her benefit year, as required by 430 CMR 4.45(4).

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 suitable part-time work, as permitted pursuant to G.L.c.151A, § 24(b), and 430 CMR 4.45.

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

BOSTON, MASSACHUSETTS
DATE OF DECISION - February 26, 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

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.

PGS/rh