

The review examiner reasonably accepted as credible evidence showing the claimant was medically cleared to return to full-time work with the restriction of not lifting more than 20 lbs. Because the claimant searched for full-time work meeting his restrictions and was otherwise available for work, he met the eligibility requirements under G.L. c. 151A, § 24(b).

**Board of Review
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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 18, 2024, which was denied in a determination issued on December 14, 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 February 12, 2025. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not capable of work 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 obtain additional evidence about the claimant's capability to 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 entitled to benefits because he had not shown that he was medically cleared to return to full-time work, 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 worked full-time as a delivery driver for his most recent employer (Company A).
2. The claimant has 26 years of experience as a driver.

3. Before becoming a driver, the claimant had experience working in the heating industry, but he no longer possesses the required license to perform HVAC work.
4. During the claimant's employment with Company A, his job duties as a delivery driver included lifting objects that weighed more than 20 pounds.
5. During the claimant's employment with Company A, he sustained an injury that caused him to remain out of work due to medical issues with "recurring spasms" and he could "barely walk."
6. On 2/15/2024, the claimant began a leave of absence from Company A due to his medical condition. The claimant exhausted his entitlement to a leave of absence under FMLA on 6/27/2024.
7. On an unknown date, the claimant's medical provider submitted "ADA paperwork" to Company A that stated, in part, the claimant was "unable to perform any and all functions within the job title due to [his] medical condition." The claimant's doctor also stated that the claimant could not "perform any other job functions in any work position that is offered."
8. Company A only had delivery driver positions available. All delivery drivers at Company A were required to lift objects that weighed more than 20 pounds.
9. The claimant did not receive a copy of the "ADA paperwork" that his medical provider submitted to Company A.
10. On 6/25/2024, the claimant had a telephone conversation with Company A's human resource manager (HR Manager) where the claimant acknowledged that he was "aware that the doctor had written that [he] could not continue to do [his] current job or any other job [Company A] could offer." The claimant confirmed to the HR manager that he was "in alignment with the doctor's recommendation."
11. On 7/9/2024, the HR Manager issued the claimant a letter that reiterated the conversation she had with the claimant on 6/25/2024. The HR Manager informed the claimant that Company A was separating the claimant from his employment due to the "indefinite nature of [his] continued need for leave."
12. As of 7/9/2024, Company A did not have other positions available for the claimant to be transferred to that would accommodate his medical restrictions of not lifting more than 20 to 40 pounds.
13. As of 7/9/2024, Company A only had delivery driver positions available for the claimant, which would have required the claimant to lift objects that were more than 20 to 40 pounds.

14. The claimant filed a claim for unemployment benefits with an effective date of 8/18/2024.
15. On 11/14/2024, the Department of Unemployment Assistance (DUA) issued the claimant a Notice of Approval under Section 25(e)(1) of the Law that stated the claimant's leaving work with Company A was because he was "unable to perform any and all functions within the job title" due to his medical condition.
16. The claimant provided the DUA with a copy of a Health Care Provider's Statement of Capability dated 12/31/2024 (12/31/2024 Statement of Capability) purported to be from his medical provider that stated the claimant was being treated for "chronic osteoarthritis, degeneration of lumbar intervertebral disc – chronic, anxiety."
17. The Statement of Capability stated that the claimant was last seen by this purported medical provider on 9/13/2024.
18. The Statement of Capability was altered to state the claimant was cleared to work full-time without any restrictions since 7/14/2024. The check mark in the box to check "no" for the question of "is the patient currently able to work in a full-time capacity with no restrictions?" was erased, and the words included under the questions, "If no, list why the patient cannot work full-time without restrictions, or if the patient can work with restrictions, explain the restrictions" were removed. The handwriting for the date "7/14/24" was not the same as handwriting that was on the second (2nd) page where the medical provider purported to have signed and dated.
19. On 2/3/2025, the claimant was seen by his medical provider.
20. On 2/13/2025, the claimant's medical provider filled out a new Health Care Provider's Statement of Capability dated 2/13/2025 (2/13/2025 Statement of Capability). The claimant received the 2/13/2025 Statement of Capability in person on 2/13/2025.
21. The 2/13/2025 Statement of Capability stated that the claimant was cleared to work full-time without any medical restrictions since 7/14/2024.
22. Although the claimant's healthcare provider indicated in the 2/13/2025 Statement of Capability that the claimant was cleared to work without restrictions, the claimant is still unable to lift more than 20 to 40 pounds.
23. Since at least the week beginning 7/14/2024, the claimant was not physically able to work as a delivery driver with Company A due to his medical restriction of no lifting objects that weighed more than 20 pounds.

24. Since at least the week beginning 7/14/2024, the claimant was available to work full-time within his medical restriction of no lifting objects that weighed more than 20 pounds.
25. Since at least the week beginning 7/14/2024, the claimant looked for work, at least three (3) times weekly, as a bus driver, delivery driver, and as a security guard, by performing online job searches.
26. On 3/21/2025, the Company A's human resources director (HR Director) sent an email message that stated, "There was nothing in writing provided to [the claimant] at the time. There were no alternative work assignments available though."
27. On 3/21/2025, another employee from Company A forwarded the HR Director's email message to the claimant and stated, "Although it's not a letter, here is confirmation in writing from the HR Director that there were no alternative work assignments for you at the start of your leave of absence."
28. As of the date of the remand hearing, on 3/27/2025, the claimant was unable to work without the medical restriction of not lifting more than 20 to 40 pounds. The claimant is able [sic] of working full-time at a job for which he does not have to lift more than 20 to 40 pounds.

Credibility Assessment:

The claimant credibly testified that he was available to work full-time hours if work was offered since at least 7/14/2024. The claimant's testimony that he was looking for full-time work within the medical restriction of not lifting objects more than 20 to 40 pounds was found credible as it was consistent throughout his testimony during the hearings on this matter.

Additionally, the claimant credibly testified that he was injured during his employment with Company A. The claimant's testimony that his separation from Company A was due to Company A's inability to accommodate his medical restriction of no lifting objects more than 20 to 40 pounds was credible, as it was corroborated by the letter from the HR Manager dated 7/9/2024, and the email messages dated 3/12/2025. Further, the email messages from the employer dated 3/12/2025 established that the employer did not have other available positions for the claimant to work as of the start of his leave of absence in February of 2024.

It is still found that the 12/31/2024 Statement of Capability appears altered and the information presented in that document is not accepted as credible. However, the claimant submitted a new statement, the 2/13/2025 Statement of Capability, which indicates that the claimant was capable of working without restrictions. While the statement indicates "without restrictions," the testimony of the claimant and his wife established that as of at least 7/14/2024, in actuality, the claimant could not

work a full-time job which required lifting more than 20 to 40 pounds. Nevertheless, he could work full-time in a job which accommodated this restriction.

Thus, as of at least 7/14/2024, the claimant was able to work full-time with the restriction of no lifting objects more than 20 to 40 pounds. As of the date of the remand hearing, 3/27/2025, the claimant's medical restrictions had not changed.

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, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant is not entitled to 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

Claimants are only eligible for benefits if they are physically capable of, available for, and actively seeking full-time work, and they may not turn down suitable work.¹

The review examiner initially concluded that the claimant had not shown he was capable of full-time work because he did not present credible evidence showing he was medically cleared to return to work. *See Consolidated Finding # 18.* We remanded the case to provide the review examiner the opportunity to assess additional medical documentation, which the claimant had submitted with his appeal.

Following remand, the review examiner accepted as credible the additional medical documentation corroborating the claimant's testimony that he was cleared to work full-time on July 14, 2024. *See Consolidated Findings ## 20–22.* 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). Upon review, we have accepted the review examiner's credibility assessment as being supported by a reasonable view of the evidence.

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.

While the limitations caused by the claimant's back injury precluded him from returning to work for Company A, he did not have any medical restrictions on his ability to work other jobs that did not have the same physical requirements. *See* Consolidated Finding ## 23, 24, and 28. Since being cleared to return to work on July 14, 2024, the claimant has been actively seeking work that did not require him to lift more than twenty pounds. Consolidated Finding # 25. As there was no evidence suggesting that the claimant was otherwise unavailable for work, we believe that the record establishes that the claimant was capable of, available for, and actively seeking suitable full-time work as of that date.

We, therefore, conclude as a matter of law that the claimant was capable of, available for, and actively seeking work within the meaning of G.L. c. 151A, § 24(b), beginning July 14, 2024.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week July 14, 2024, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 25, 2025



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.

LSW/rh