

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Thomas Kimball,
Petitioner,

No. DET-23-601

v.

Dated: **JAN 11 2023**

Department of Unemployment Assistance,
Respondent.

Appearance for Petitioner:

Thomas Kimball (pro se)

Appearance for Respondent:

Philip Ross, Esq.

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF DECISION

Medical issues required the petitioner to take unpaid leave from his job. While on leave, he remained capable of working in certain other occupations, and he actively sought such work. He is therefore entitled to unemployment benefits.

DECISION

Petitioner Thomas Kimball took unpaid medical leave from a position with the Department of Unemployment Assistance. He applied for unemployment benefits. In its capacity as the agency responsible for such benefits, the department denied Mr. Kimball's application. The department referred Mr. Kimball's ensuing appeal to DALA. I held an evidentiary hearing by WebEx on January 8, 2024. Mr. Kimball was the only witness. During and after the hearing, I admitted into evidence exhibits marked 1-15.

Findings of Fact

I find the following facts.

1. Mr. Kimball is a department employee. His job title is “job service representative.” In that capacity, he is responsible for analyzing unemployment claims. His duties require him to study a computer screen nearly all day long. (Exhibits 6, 10; testimony.)

2. During April 2023, Mr. Kimball suffered a traumatic brain injury, which led to post-concussion syndrome. His symptoms include migraines, insomnia, and sensitivity to screens, light, and noise. Mr. Kimball was initially prescribed the following restrictions: “Dark rooms, minimal screen time, minimal access to light/noise” In a recent letter, Mr. Kimball’s neurologist clarified that he remains capable of working “in the logistics field.” (Exhibits 2, 3, 15; testimony.)

3. Mr. Kimball began a period of paid medical leave from work on April 24, 2023. In early September 2023, his leave became unpaid. He applied for unemployment benefits effective as of that time. He has not yet returned to work. (Exhibits 8-10; testimony.)

4. While on unpaid leave, Mr. Kimball has attempted to find work that his medical condition would allow for. He has mostly sought commercial driving jobs that he could perform in relative quiet and with sunglasses on his eyes (also, with little screen time). He has compiled logs of his job-seeking efforts. (Exhibit 14; Testimony.)

5. On October 26, 2023, the department denied Mr. Kimball’s application for benefits, explaining: “Since work remains available to you, it is determined that you are not in unemployment” Mr. Kimball timely appealed. (Exhibits 12, 13.)

Analysis

To be eligible for unemployment benefits, an individual must be “capable of . . . and actively seeking work in his usual occupation or any other occupation for which he is reasonably fitted.” G.L. c. 151A, § 24(b). *See generally York v. Encompass Ins. Co.*, 2003 Mass. App. Div. 45 (Dist. Ct. 2003). At the hearing, the department explained that it denied Mr. Kimball’s

application on the theory that, in light of his medical condition, he is neither “capable of” nor “actively seeking” work. According to the department, the language in its denial notice about work “remain[ing] available” to Mr. Kimball was produced by an inflexible computer template.

The evidence on appeal makes clear that Mr. Kimball has actively sought work during the pertinent period. His symptoms do reduce the extent to which he is “capable of” working. He cannot perform his job with the department, which requires prolonged screen time. The types of jobs he is now suited for are limited by his medical restrictions, especially his sensitivity to light. Nonetheless, Mr. Kimball remains capable of performing the specific type of work that he has pursued. Although the department declined to amend its decision while the appeal was pending, it effectively conceded the foregoing points at the hearing.

Conclusion and Order

Mr. Kimball is entitled to unemployment benefits. The department’s contrary decision is REVERSED.

JAN 11 2024

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate