THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
BOARD OF REVIEW

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BOARD OF REVIEW DECISION

BR-112903 (May 11, 2010) -- After exhausting regular benefits and Emergency Unemployment Compensation benefits, a claimant was entitled to participate in the extended benefits program. Under G.L. c. 151A, sec. 30A(2), these extended benefits are reduced to the same extent as were the regular and EUC benefits—subject to a constructive deduction, which resulted from a disqualifying separation from part-time work in the benefit year

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Division of Unemployment Assistance (DUA) to deny extended benefits to the claimant. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant separated from employment and was granted regular unemployment benefits in January, 2007. After exhausting both regular and federal Emergency Unemployment Compensation (EUC) benefits, he submitted a claim for extended benefits with the DUA, but was disqualified in a determination issued on October 15, 2009. 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 extended benefits in a decision rendered on February 2, 2010.

Extended benefits were denied after the review examiner determined that because the claimant's regular unemployment benefits had been subject to a constructive deduction following his disqualifying separation from part-time employment, the claimant was not entitled to extended benefits under G.L. c. 151A, § 30(A)(2). 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 on appeal is whether an event that would result in a constructive deduction while a claimant is collecting regular benefits subjects a claimant to total disqualification from extended benefits.

Findings of Fact

The review examiner's consolidated findings of fact and credibility assessments are set forth below in their entirety:

1. The claimant initiated a new benefit claim on January 16, 2007.

2. On November 14, 2008 the claimant was issued notice of a constructive deduction of benefits.

3. The claimant did not file an appeal on the matter.

4. On October 15, 2009, the claimant was issued a Notice to EB Claimant of Disqualification that notified the claimant he was disqualified from receiving Extended Benefits, as of the week ending May 23, 2009, and until he has eight weeks of work and in each week earned an amount equal to or in excess of his weekly benefit amount.

5. The claimant has had no other employment.

Ruling of the Board

The Board adopts the review examiner's consolidated findings of fact. In so doing, we deem them to be supported by substantial and credible evidence. However, we reach our own conclusions of law, as are discussed below.

Based upon a disqualifying separation from subsequent part-time employment during the benefit year, the claimant's regular unemployment benefits were subject to a constructive deduction. His failure to appeal the constructive deduction rendered that determination final. Upon exhausting these regular benefits, the claimant received EUC, also subject to the constructive deduction. The question is whether this constructive deduction, by itself, disqualified the claimant from participating in the extended benefit program under G.L. c. 151A, § 30A.

G.L. c. 151A, § 30A provides, in relevant part, as follows:

> (2) Except when the result would be inconsistent with the other provisions of this section, as provided in the regulations of the commissioner, the provisions of this chapter which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

A similar provision appears in § 202(a) of the Federal-State Extended Unemployment Compensation Act of 1970, which provided, in pertinent part, as follows:

> (2) Except where inconsistent with the provisions of this title, the terms and conditions of the State law which apply to claims for regular compensation and to the payment thereof shall apply to claims for extended compensation and to the payment thereof.

In rendering our decision, we are aware of recent correspondence from the U.S. Department of Labor, which interpreted the above provisions to mean that a constructive deduction merely reduces a worker's entitlement to extended benefits to the same extent as regular benefits. *See* Letter from Gay M. Gilbert, Administrator, Office of Unemployment Insurance, U.S. Department of Labor, to Joanne Goldstein, Secretary, Massachusetts Department of Labor and Workforce Development, dated March 4, 2010.

In the present appeal, since the disqualifying separation from subsequent part-time employment merely reduced the claimant's regular benefits by the amount of his constructive deduction, the claimant should be entitled to extended benefits under G.L. c. 151A, § 30A, subject only to the same constructive deduction. Nothing in the record presents any other basis for denying extended benefits.

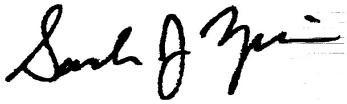
We, therefore, conclude as a matter of law that the constructive deduction does not disqualify the claimant from extended benefits under G.L. c. 151A, § 30A.

The review examiner's decision is reversed. The claimant is eligible to receive extended benefits as of the week ending May 23, 2009 and for subsequent weeks if otherwise eligible. These benefits shall be subject to the same constructive deduction imposed upon the claimant's regular unemployment benefits.

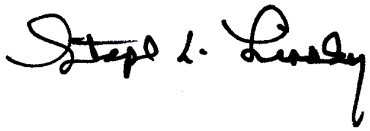
Consequently, to the extent the Board has rendered similar prior decisions on this issue that are inconsistent with today's ruling, those decisions are hereby overruled.

BOSTON, MASSACHUSETTS
DATE OF MAILING - May 11, 2010

John A. King, Esq.
Chairman



Sandor J. Zapolin
Member



Stephen M. Linsky, Esq.
Member

ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS DISTRICT COURT
(See Section 42, Chapter 151A, General Laws Enclosed)

LAST DAY TO FILE AN APPEAL IN COURT – June 9, 2010

AB/rh