

**Board of Review
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Issue ID: 0002 1114 94

BOARD OF REVIEW DECISION

0002 1114 94 (Nov. 4, 2013) – Held that claimant with two part-time jobs was in partial unemployment during a week when her employer reduced her hours. She was not required to turn down work from the other employer in order to make herself more available to the employer for replacement hours.

Introduction and Procedural History of this Appeal

The employer appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to award unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

The claimant reopened her existing claim for unemployment benefits with the DUA on September 14, 2012. The effective date of the claim is September 8, 2012. The DUA approved her claim on December 7, 2012, concluding that she was entitled to partial benefits, pursuant to G.L. c. 151A, §§ 29(b) and 1(r). The employer appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner affirmed the agency's initial determination and awarded partial benefits in a decision rendered on February 5, 2013. We accepted the employer's application for review.

Partial unemployment benefits were awarded after the review examiner determined that the claimant was accepting all available work and was in partial unemployment under G.L. c. 151A, §§ 29(b) and 1(r). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the employer's appeal, we remanded the case to the review examiner to make subsidiary findings from the record pertaining to the claimant's availability. 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 conclusion that the claimant was eligible for partial benefits under G.L. c. 151A, §§ 29(b) and 1(r), when her availability for hours to replace those lost to a legal holiday was limited due to her other part-time employment, is supported by substantial evidence and correct as a matter of law.

Findings of Fact

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

1. The claimant worked part time at various assignments through the employer's staffing agency from September 20, 2011 until December 17, 2012.
2. The claimant told the employer that she was limited in the number of hours she was available for work because she had other part time jobs. The claimant told the employer she was only available for part time work.
3. The claimant's most recent assignment was as an assistant in the Registrar's office at a local college.
4. The assignment was from August 17, 2012 through December 17, 2012.
5. The claimant worked two to three days per week depending upon the needs of the Registrar's office. The Registrar's office would tell the claimant which days she was needed to work each week. The claimant was paid \$16.00 per hour.
6. During the week ending September 8, 2012, the claimant worked 15 hours for the instant employer and earned \$240.00.
7. The Registrar told the claimant she only had work on two days during the week ending September 8, 2012 due to the Labor Day Holiday.
8. The claimant did not refuse any work during the week ending September 8, 2012.
9. The employer refrained from offering the claimant any additional work because she had limited availability.
10. The claimant also worked part time for another employer during the week ending September 8, 2012. The claimant performed office/clerical work for that employer and earned approximately \$200.
11. The claimant reopened an existing claim for unemployment benefits on September 14, 2012. The reopened claim is effective for the week ending September 8, 2012.
12. Prior to September 14, 2012, the Agency determined that the claimant was monetarily eligible to receive benefits in the amount of \$388.00 per week with an earnings exclusion of \$129.33.

Ruling of the Board

In accordance with our statutory obligation, we review the consolidated findings of fact 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 ultimate conclusion that the claimant is not entitled to benefits is free from error of law. Upon such review, and as discussed more fully

below, 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.

G.L. c. 151A, § 29(b), authorizes benefits to be paid to those in partial unemployment. Partial unemployment is defined at G.L. c. 151A, § 1(r)(1), which provides, in relevant part, as follows:

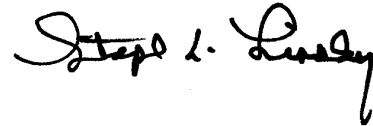
“Partial unemployment”, an individual shall be deemed to be in partial unemployment if in any week of less than full-time weekly schedule of work he has earned or has received aggregate remuneration in an amount which is less than the weekly benefit rate to which he would be entitled if totally unemployed during said week;...

The findings provide that the claimant's weekly hours for the employer were reduced during the week ending September 8, 2012, because of the Labor Day holiday. They also provide that during that week, the employer did not offer additional work to the claimant due to the fact that she had another part-time job. Though the findings do not include the claimant's precise schedule for that week, we know that the employer's client furnished work for two of the remaining work days following Labor Day.

It is evident that the claimant cobbled together two part-time jobs to create a full-time weekly schedule of work. Since the employer reduced her normally scheduled hours, it is up to the employer to replace them. The claimant was not required to clear the rest of her work schedule—and turn down regular work from another employer—so that the employer would have more options to replace the hours lost as a result of Labor Day.

We, therefore, conclude as a matter of law that the claimant was in partial unemployment within the meaning of G.L. c. 151A, § 1(r)(1).

The review examiner's decision is affirmed. The claimant is entitled to receive benefits for the week ending September 8, 2012, and for subsequent weeks if otherwise eligible.



Stephen M. Linsky, Esq.
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION – November 4, 2013



Judith M. Neumann, Esq.
Member

ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS 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.

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.

SVL/rh