

**Board of Review  
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**Issue ID: 0012 0091 70  
Claimant ID: 10180882**

## **BOARD OF REVIEW DECISION**

0012 0091 70 (Sept. 10, 2014) - Although there was no evidence that the claimant's former employer contributed to or maintained the claimant's pension, the claimant's weekly benefit rate was subject to a reduction pursuant to G.L. c. 151A, § 29(d)(5), because she was a teacher receiving a pension through the Massachusetts Teacher's Retirement System.

### **Introduction and Procedural History of this Appeal**

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA), that the claimant's benefit rate should be reduced based on her receipt of a pension. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm, but on grounds which differ from those articulated by the review examiner.

The claimant separated from her position with a municipal employer on June 30, 2013. Later, she filed a claim for unemployment benefits, effective November 10, 2013. She was approved to receive benefits. On January 2, 2014, the DUA sent the claimant a Notice of Disqualification, informing her that, pursuant to G.L. c. 151A, § 29(d)(6), she was subject to a weekly deduction from her benefit rate of \$476.00 due to her receipt of a pension. The deduction would be effective June 30, 2013, and continue indefinitely. 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 conclusion that the claimant's benefit rate should be reduced but modified that amount to \$587.00 per week in a decision rendered on February 14, 2014.

The claimant's benefits were to be reduced, because the review examiner determined that the claimant was receiving a pension, funded in part by her former base period employer. Thus, she was subject to the provisions of G.L. c. 151A, § 29(d)(6). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we accepted the claimant's application for review. 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's benefit rate must be reduced, pursuant to G.L. c. 151A, § 29(d)(6), based on her receipt of a pension is based on substantial and credible evidence and free from error of law.

### **Findings of Fact**

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

1. On November 15, 2013, the claimant filed a new claim for unemployment insurance benefits, effective November 10, 2013.
2. The Department of Unemployment Assistance established the claimant's weekly benefit rate to be \$679.00 based on earnings from her base period employers which included wages earned as a special needs teacher for a town school department.
3. The claimant worked for the school department for the Town of [A] from September, 2000 until she retired from her job on June 30, 2013.
4. The claimant had thirty (30) years of service as a teacher in the state of Massachusetts.
5. While employed as a teacher, the claimant contributed to her retirement the maximum amount allowed by the Law.
6. Since 2000, the claimant has contributed 11% of her gross biweekly wages to her pension annuity account, totaling \$323.47 each pay period.
7. The employer contributed an unknown percentage to the claimant's pension.
8. As of December 31, 2012, the gross amount in the claimant's pension annuity account was \$145,264.80.
9. The claimant began receiving a state pension through the Massachusetts Teachers Association Retirement System effective July 1, 2013 in the amount of \$5,050.00, which included the claimant funded annuity account.

### Ruling of the Board

In accordance with our statutory obligation, we review 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 ultimate conclusion that the claimant is subject to the pension deduction is free from error of law. Upon such review and as discussed more fully below, the Board adopts the review examiner's findings of fact with the exception of Finding of Fact # 7. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence.

The agency and the review examiner applied G.L. c. 151A, § 29(d)(6) in this case. This provision provides, in relevant part, as follows:

(d) An individual in unemployment and otherwise eligible for benefits, who is receiving, has received, or will receive payments in the form of retirement benefits, any part of which was financed by a base period employer, shall be paid for each week of unemployment an amount computed as follows:. . .

(6) Notwithstanding any of the foregoing provisions of this subsection, the amount of benefits otherwise payable to an individual for any week which begins in a period with respect to which such individual is receiving governmental or other pension . . . shall be reduced by an amount equal to the amount of such pension . . . which is reasonably attributable to such week; provided, further, that . . . such reduction shall apply only if a base period employer contributed to or maintained such pension . . . and . . . services of the individual for such employer during the base period affected eligibility for or increased the amount of such pension . . . and provided further, that if the individual contributed to such plan, the amount of benefits otherwise payable to such individual shall be reduced by fifty per cent of the amount of such pension . . . .

As this portion of the statute indicates, in order for the claimant's benefit rate to be reduced, the base period employer must have contributed to or maintained the pension. In this case, the review examiner found (Finding of Fact # 7) that the employer contributed an unknown percentage to the claimant's pension. We reject this finding as not being supported by substantial and credible evidence in the record. The claimant did not testify with any certainty, competence, or knowledge that the employer contributed to her pension. In addition, the documentation submitted by the claimant does not indicate that her former employer, the Town of [A], contributed to the claimant's pension over the course of the thirty years that she provided teaching services to the town. The review examiner also reached certain conclusions and inferences pertaining to the amount of retirement funds available to the claimant and when those funds would exhaust that were based on the finding that the employer contributed to the pension. Those conclusions and inferences are also set aside.

Since there is no evidence that the Town of [A] contributed to or maintains the claimant's pension, the claimant's benefit rate cannot be reduced pursuant to the above-cited provision. However, as a teacher receiving a pension under the Massachusetts teacher's retirement system, G.L. c. 151A, § 29(d)(5), applies and provides as follows:

An unemployed individual who during the base period, performed services as a teacher as defined in section one of chapter thirty-two and who is receiving, has received, or will receive payments in the form of retirement benefits under the provisions of said chapter thirty-two, shall have his weekly benefit rate reduced in accordance with the provisions of this subsection notwithstanding the fact that such payments are not financed in any part by a base period employer.

The claimant fits squarely within the meaning of this provision. First, the review examiner found that the claimant worked for the Town of [A] in her base period. Second, there is no dispute that the claimant was a teacher. Third, the review examiner found that the claimant receives her pension through the Massachusetts teacher's retirement system. That system is subject to the provisions of G.L. c. 32, which governs the Commonwealth's retirement and pension system. Since she is receiving the pension under the provision of G.L. c. 32, it does not matter that the Town of [A] did not contribute to the claimant's pension payments. G.L. c. 151A, § 29(d)(5), requires that her benefit rate is reduced because of her pension.

As to the amount of the deduction, the review examiner's figure of \$587.00 per week is correct. Under G.L. c. 151A, § 29(d)(1), the benefit rate is reduced by 50 per cent of the amount of the retirement benefits. In this case, the claimant receives \$5,050.00 each month from her pension. This equates to \$1,174.41 per week.<sup>1</sup> Half of this amount is \$587.00, so that much must be deducted each week from the claimant's benefit rate.

We, therefore, conclude as a matter of law that the review examiner's conclusion that the claimant's benefit rate should be reduced by \$587.00 per week due to her receipt of a pension is correct, based on the provisions of G.L. c. 151A, § 29(d)(5), rather than G.L. c. 151A, § 29(d)(6).

The review examiner's decision is affirmed, pursuant to G.L. c. 151A, § 29(d)(5). Effective at the start of her claim, the claimant's benefit rate shall be reduced by \$587.00 per week due to her receipt of a pension. Since this amount does not reduce her entire benefit rate to \$0.00,<sup>2</sup> the claimant may receive benefits, subject to the pension deduction, if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - September 10, 2014**



Paul T. Fitzgerald, Esq.  
Chairman



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.

SF/rh

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<sup>1</sup> To obtain the average weekly amount of the pension, the total monthly amount is divided by 4.3.

<sup>2</sup> The claimant's benefit rate was found to be \$679.00 per week. After the pension reduction, and before any deductions for any partial earnings the claimant may have, she is entitled to \$92.00 per week in unemployment benefits.