

0017 2555 29 (July 29, 2016) – When the claimant was summoned to grand jury service, she was on leave from her full-time employer and eligible for benefits due to urgent, compelling, and necessitous circumstances. Because the claimant was able to work some hours for her employer, she was in partial unemployment.

Board of Review
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Issue ID: 0017 2555 29
Claimant ID: 10426638

BOARD OF REVIEW DECISION

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 was not totally separated from the employer after she was summoned to serve on grand jury duty. The claimant served on a grand jury from October 5, 2015, through December 3, 2015, during which period of time, although unable to work her normal full-time schedule, she worked some hours for the employer. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on November 28, 2015. The claimant 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 denied benefits in a decision rendered on February 1, 2016. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not in total or partial unemployment during the period of her grand jury service and, thus, was disqualified under G.L. c. 151A, §§ 29(a), 29(b), and 1(r). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we afforded the parties an opportunity to submit written reasons for agreeing or disagreeing with the decision. Only the claimant responded. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's conclusion that, during the period of the claimant's mandatory grand jury service, she was not entitled to benefits because she was not in unemployment is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The effective date of the claim [is] 10/25/15.
2. The claimant's weekly benefit amount is \$596.00. Her earnings disregard is \$198.67.
3. The employer is an [sic] automobile parts manufacturer.
4. The claimant began work for the employer in 2002. She still works for the employer.
5. The claimant works as a full-time controller and clerk for the employer.
6. The claimant's hourly pay rate is \$21.01.
7. The claimant is scheduled to work eight hours days, Monday through Friday. She also works overtime.
8. The employer has a jury duty policy. (Exhibit 8). The policy reads, "Employees who are summoned and report for jury duty as prescribed by applicable law, shall be compensated by the Company as described herein. For a period of time not to exceed ten (10) working days, the employees will be paid an amount equal to the difference between their straight time hourly rate of pay, including shift premium and group leader rate if applicable which such employees would receive by working during straight time hours for the Company on that day, and the daily jury duty fee paid by the court for each day they report for and perform jury duty which they otherwise would have been scheduled to work during the normal work week." The claimant understood this policy.
9. The claimant was selected for grand jury duty. She served this duty from 10/05/15 to 12/03/15. Each week, she served Monday through Thursday. The court paid \$50.00 to the claimant for each day she served.
10. The claimant did not have jury duty on Fridays. She worked for the employer on Fridays, except for the Friday after Thanksgiving. She also worked some early morning hours before her jury duty and some evening hours after it.
11. In the period 10/05/15 to 12/03/15, the claimant was not available to work Monday through Thursday while she was in jury duty. She was not available to work her normal full-time hours.
12. In the period 10/05/15 to 12/03/15, the employer continued to offer full-time work for the claimant. The employer did not reduce the claimant's hours.
13. For the week 10/04/15 to 10/10/15, the employer paid the claimant \$842.57 gross. The employer paid her for 5 regular hours and 8 personal time hours.

- The employer also paid her normal hourly rate for 27 jury duty hours. (Exhibit # 7, pg. 11).
14. For the week 10/11/15 to 10/17/15, the employer paid the claimant \$1,047.45 gross. The employer paid her for 11.5 regular hours, 6.5 overtime hours, and 8 holiday hours. The employer also paid her normal hourly rate for 27 jury duty hours. (Exhibit # 7, pg. 13).
 15. For the week 10/18/15 to 10/24/15, the employer paid the claimant \$839.85 gross. The employer paid her for 22.5 regular hours and 1.5 overtime hours. The employer also paid her normal hourly rate for 19 jury duty hours. (Exhibit # 7, pg. 15).
 16. For the week 10/25/15 to 10/31/15, the employer paid the claimant \$621.55 gross. The employer paid her for 28 regular hours and 4 personal hours. The employer also paid her normal hourly rate for 7 jury duty hours. (Exhibit # 7, pg. 17).
 17. For the week 11/01/15 to 11/07/15, the employer paid the claimant \$132.90 gross. The employer paid her for 15.75 regular hours. (Exhibit # 7, pg. 19).
 18. For the week 11/08/15 to 11/14/15, the employer paid the claimant \$385.52 gross. The employer paid her 18.25 regular hours. (Exhibit # 7, pg. 22).
 19. For the week 11/15/15 to 11/21/15, the employer paid the claimant \$264.69 gross. The employer paid her for 12.5 regular hours. (Exhibit # 7, pg. 24).
 20. For the week 11/22/15 to 11/28/15, the employer paid the claimant \$417.04 gross. The employer paid her for 3.75 regular hours and 16 holiday hours. (Exhibit # 7, pg. 26).
 21. For the week 11/29/15 to 12/05/15, the employer paid the claimant \$443.31 gross. The employer paid her for 21 regular hours. (Exhibit # 7, pg. 28).
 22. The claimant returned to her normal full-time work schedule when jury duty ended.
 23. DUA disqualified the claimant from 11/04/15 onward, pursuant to Sections 29(b) and 1(r) of the law. (Exhibit # 4).

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 is free from error of law. Upon such review, the Board adopts the review examiner's findings of fact and deems them to

be supported by substantial and credible evidence. However, as discussed more fully below, we conclude, contrary to the review examiner, that, during her grand jury service, the claimant was on an involuntary leave of absence during which she worked some hours for the employer, and therefore was in partial unemployment.

We note at the outset that 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; provided, however, that certain earnings as specific in paragraph (b) of section twenty-nine shall be disregarded.”

G.L. c. 151A, § 29(a), authorizes benefits to be paid to those in total unemployment. Total unemployment is defined at G.L. c. 151A, § 1(r)(2), which provides, in relevant part, as follows:

“Total unemployment”, an individual shall be deemed to be in total unemployment in any week in which he performs no wage-earning services whatever, and for which he receives no remuneration, and in which, though capable and available for work, he is unable to obtain any suitable work.

Also relevant in this case is G.L. c. 151A, § 25(e), which provides, in pertinent part, as follows:

An individual shall not be disqualified from receiving benefits under the provisions of this subsection, if such individual establishes to the satisfaction of the commissioner that his reasons for leaving were for such an urgent, compelling and necessitous nature as to make his separation involuntary.

The findings reflect that the claimant was summoned by the Commonwealth of Massachusetts for grand jury service from October 5 through December 3, 2015. During this time she maintained her relationship with the employer, working during days and times when the grand jury was not in session. Since, once summoned, she was legally bound to participate in the grand jury, which is a vital component of a free society, her absence from work was for “urgent, compelling and necessitous nature as to make [her] separation involuntary,” within the meaning of the above-quoted provision of G.L. c. 151A, § 25(e). This circumstance is recognized in DUA’s Service Representative Handbook, Section 1039 (“An otherwise available claimant summoned for jury duty during a period of unemployment continues to be eligible for benefits pursuant to § 24(b) of the Law during the period of jury service.”).

In this case, the claimant’s jury duty schedule required her to serve Monday through Thursday during the weeks in question. She worked for the employer on Fridays, during early morning hours before jury duty began, and during some evening hours. The findings set forth the claimant’s weekly earnings from the employer for each week during which she served on the grand jury. Finding of Fact # 2 establishes that the claimant’s weekly benefit rate plus her

statutory “earnings disregard” is \$794.67. Therefore, according to the definition of “partial unemployment” set forth above, and utilizing the earnings amounts set forth in Findings of Fact ## 13 through 21, above, the claimant was not in unemployment during the weeks ending October 10, 2015, October 17, 2015, and October 24, 2015, because she earned more than \$794.67 during each of those weeks. However, she was in partial unemployment during the weeks ending October 31, 2015, November 7, 2015, November 14, 2015, November 21, 2015, November 28, 2015, and December 5, 2015, because in each of those weeks she earned less than \$794.67.

We, therefore, conclude as a matter of law that the claimant was in partial employment within the meaning of G.L. c. 151A, § 29(b) and (1)(r)(1) during the weeks ending October 31, 2015, November 7, 2015, November 14, 2015, November 21, 2015, November 28, 2015, and December 5, 2015, because she worked less than her full-time weekly schedule of work and received less remuneration than the weekly benefit rate to which she would have been entitled if totally unemployed during those weeks, plus the “earnings disregard.” She was not in either total or partial unemployment during the weeks ending October 10, 2015, October 17, 2015, and October 24, 2015, because she earned more than her weekly benefit rate plus her earnings disregard during each of those weeks.

The review examiner’s decision is reversed. The claimant is entitled to receive benefits for the weeks ending October 31, 2015, November 7, 2015, November 14, 2015, November 21, 2015, November 28, 2015, and December 5, 2015, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - July 29, 2016



Paul T. Fitzgerald, Esq.
Chairman



Judith M. Neumann, Esq.
Member

Member Charlene A. Stawicki, Esq. did not participate in this decision.

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS STATE DISTRICT
COURT OR TO THE BOSTON MUNICIPAL 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.

SPE/rh