

Back pay constitutes remuneration pursuant to G.L. c. 151A, § 1(r)(3). Claimant is disqualified from receiving unemployment benefits for the period covered by the back pay award. She must repay any such benefits already received back to the DUA, notwithstanding an agreement with her employer.

**Board of Review
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Issue ID: 0013 2362 30

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Rorie Brennan, a review examiner of the Department of Unemployment Assistance (DUA), to deny the claimant benefits, due to her receipt of remuneration in the form of back pay. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On May 7, 2014, the agency initially determined that the claimant was not entitled to unemployment benefits for the period from May 5, 2013 through May 3, 2014. The claimant appealed, and both parties attended the hearing. In a decision rendered on July 30, 2014, the review examiner affirmed the agency determination, concluding that the claimant received remuneration, as defined under G.L. c. 151A, § 1(r)(3), from the employer for the period addressed by the determination and, thus, was not in unemployment, under G.L. c. 151A, §§ 29(a) and 1(r). The Board accepted the claimant's application for review.

Ruling of the Board

After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we conclude that the review examiner's ultimate conclusion that the claimant is not entitled to unemployment benefits for the period from May 5, 2013, through May 3, 2014, is free from error of law. We also conclude that the review examiner's findings of fact are supported by substantial and credible evidence in the record, except for the figure noted in Finding of Fact # 6, which refers to the claimant's total back pay award from the arbitration agreement.

During the hearing, the employer's witness testified that the total amount of the back pay award was \$63,111.84. The claimant did not dispute this figure. Although the claimant may have ultimately received approximately \$14,000.00 after money was deducted from the award for

various purposes, we are interested in the total amount of the award. Based on the \$63,111.84 figure, which is an amount that clearly corresponds to at least one year's worth of salary for the claimant, the conclusion that the claimant should be disqualified from receiving unemployment benefits for the year noted in the original determination is entirely appropriate. *See Meyers v. Dir. of Division of Employment Security*, 341 Mass. 79 (1960) (holding that an award of back pay arising out of an arbitration proceeding constitutes disqualifying remuneration).

During the hearing, the parties were not so much disputing the fact that the claimant may have been overpaid benefits, but that the employer has tried to repay the overpayment to the DUA without success. This concern is referenced in the review examiner's Finding of Fact # 7. It appears that the parties together decided that, rather than the employer pay the claimant the full amount of the back pay award (and then the claimant would, in turn, pay the DUA), the employer would simply pay the money back to the DUA. We need not discuss this issue at any length, but we do note that the DUA is not required to abide by this private agreement between the parties. The Supreme Judicial Court commented this way on the issue in *Meyers*, 341 Mass. at 82:

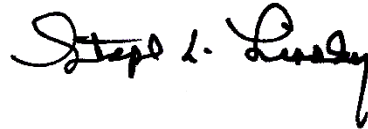
Chapter 151A does not specifically deal with the exact situation before us where *Meyers* received an award of back pay in arbitration proceedings growing out of a violation of a collective bargaining agreement. It is clear from the language used by the arbitrator that the award was to make the petitioner whole for the wages he lost It appears that the award only gave the petitioner his back pay less the amount he received from unemployment benefits. This award, however, is not binding upon us or upon the director of the division. The Supreme Court of the United States has stated that the matter of recoupment by the State for unemployment benefits is a matter between the State and the employee. *National Labor Relations Bd. v. Gullett Gin Co.* 340 U.S. 361, 365.

The review examiner's decision is affirmed. The claimant is denied benefits for the period from May 5, 2013 through May 3, 2014. She has been overpaid unemployment benefits and must repay those benefits to the DUA.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - November 13, 2014



Stephen M. Linsky, 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