

Although the earnings which the claimant received from the employing unit could not have been used to establish a claim, pursuant to G.L. c. 151A, § 6(u), the earnings are considered to be remuneration under G.L. c. 151A, § 1(r)(3), because the definition of remuneration is broad and includes more employing units than the definition of employment.

**Board of Review
19 Staniford St., 4th Floor
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.
Chairman
Judith M. Neumann, Esq.
Member
Charlene A. Stawicki, Esq.
Member**

Issue ID: 0017 0839 70

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), which concluded that the earnings the claimant received from the employing unit constituted remuneration, for purposes of G.L. c. 151A, § 1(r)(3). We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

The claimant filed a claim for unemployment benefits with the DUA, which was determined to be effective April 12, 2015. After the claimant began performing services for the employing unit, the DUA issued a Notice of Disqualification on November 19, 2015, which determined that the claimant was in partial unemployment for the period from August 23, 2015, through October 3, 2015.¹ The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the claimant, the review examiner affirmed the agency's initial determination in a decision rendered on December 30, 2016.

The decision affirming the DUA's determination was based on the review examiner's conclusion that the earnings received by the claimant from the employing unit constituted remuneration, under G.L. c. 151A, § 1(r)(3), and, thus, he was in partial unemployment, pursuant to G.L. c. 151A, §§ 29(b) and 1(r)(1). 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 and remanded the case to the review examiner to take additional evidence regarding the claimant's training program. Only the claimant attended the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact and returned the case to the Board. Our decision is based upon our review of the entire record.

¹ The DUA's determination implies that the DUA considered the earnings from the employing unit to be remuneration. Otherwise, the claimant would have had no partial earnings and he would have been in total unemployment. *Compare* G.L. c. 151A, § 1(r)(1) *with* G.L. c. 151A, § 1(r)(2).

The issue before the Board is whether the review examiner's conclusion that the earnings received by the claimant from the employing unit constituted remuneration is supported by substantial and credible evidence and is free from error of law, where after remand the record establishes the claimant was paid for the custodial services he performed as part of a federal job training program.

Findings of Fact

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

1. On 04/16/15 the claimant filed a claim for unemployment benefits with an effective date of 04/12/15.
2. The claimant's weekly benefit rate was set at \$149.00 with an earnings disregard of \$49.67.
3. Through his local career center, the claimant was enrolled in a federally funded training program to teach the claimant job skills.
4. Since 08/23/15, the claimant has participated in the program 20 hours per week (Monday through Friday).
5. The claimant was assigned to a training site in a church in [City A], Massachusetts at which he performs custodial services.
6. The claimant's responsibilities include cleaning the carpets, bathrooms, floors, organizing donations, and moving boxes.
7. The claimant is supervised by a church employee.
8. The program does not require any other participation than the services the claimant performs in the church. The claimant has regular discussions with his supervisor at the church regarding his job search activities.
9. The program is governed by the Older Americans Act and pays the claimant a stipend of \$9.00 per hour.
10. Under the Law, the claimant's stipend is not considered income in regards to his public housing or food stamps eligibility.
11. Upon starting the program, the claimant informed his supervisor that he was currently collecting unemployment benefits due to his separation from employment with his last employer.
12. The claimant's supervisor instructed him that his stipend from the training program was not wages and he was not required to report them to the DUA.

13. For the period 08/23/15 through 10/03/15, the claimant continued certifying his claim for unemployment.
14. Based on the information provided to the claimant by his supervisor, the claimant answered “no” to the question of whether he had worked for each week and did not report any earnings.
15. Subsequently, the DUA became aware that the claimant was paid by the instant employer.
16. On 11/19/15, the local office issued a Notice of Disqualification determining the claimant’s earnings were less than the weekly benefit rate plus the earnings disregard and [he] was therefore, in partial unemployment for the period 08/23/15 through 10/03/15. As a result, an overpayment occurred.

Regarding the portion of the December 20, 2016 hearing that was not recorded: the claimant’s attorney did not object to any of the exhibits *per se*, but made a general objection to any of the services performed by the claimant for the organization paying his stipend being characterized as “employment.”

Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the consolidated 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 consolidated findings of fact and deems them to be supported by substantial and credible evidence. As discussed more fully below, we agree with the review examiner’s legal conclusion that the earnings from the employing unit constituted remuneration, pursuant to G.L. c. 151A, § 1(r)(3).

This case arose because the statute requires that a claimant’s weekly unemployment compensation benefit be reduced by the amount of his “aggregate remuneration” (minus a certain amount that will be disregarded). *See* G.L. c. 151A, § 29(b). Here, the facts establish that, beginning with the week of August 23, 2015, while he was collecting benefits, the claimant earned \$180.00 per week performing services through a federally funded training program. The program is in place pursuant to the Older Americans Act and is codified at 42 U.S.C. § 3056. If these earnings constitute “remuneration,” then the claimant’s weekly benefits would be reduced.

“Remuneration” is defined at G.L. c. 151A, § 1(r)(3), which states, in relevant part:

For the purpose of this subsection, "Remuneration", any consideration, whether paid directly or indirectly, including salaries, commissions and bonuses, and reasonable cash value of board, rent, housing, lodging, payment in kind and all payments in any medium other than cash, received by an individual (1) from his employing unit for services rendered to such employing unit, (2) as net earnings from self-employment, and (3) as termination, severance or dismissal pay, or as

payment in lieu of dismissal notice, whether or not notice is required, or as payment for vacation allowance during a period of regular employment

The most relevant portion of the statute here is G.L. c. 151A, § 1(r)(3)(1), which refers to “any consideration . . . received by an individual . . . from his employing unit for services rendered to such employing unit.” “Employing unit” in turn is defined at G.L. c. 151A, § 1(j) as:

. . . any individual or type of organization including any partnership, firm, association, trust, trustee, estate, joint stock company, insurance company, corporation, whether domestic or foreign, or his or its legal representative, or the assignee, receiver, trustee in bankruptcy, trustee or successor of any of the foregoing or the legal representative of a deceased person who or which has or subsequent to January first, nineteen hundred and forty-one, had one or more individuals performing services for him or it within this commonwealth.

The foregoing broad definitions of both “remuneration” and “employing unit” would seem on their face to include the claimant’s earnings from his training program. The claimant argues, however, that “remuneration” for purposes of offsetting his benefits should be limited to the same kind of earnings that would be used to establish a valid claim for benefits in the first place. Establishing a valid claim for benefits depends upon having earned a sufficient amount of “wages” during a statutorily-prescribed base period prior to the claimant becoming unemployed. The term “wages” has many statutory glosses, but in its broadest form it includes, “every form of remuneration of an employee subject to this chapter for employment by an employer” G.L. c. 151A, § 1(s)(A).

It is immediately evident that the term “wages” for purposes of establishing a claim and a weekly benefit amount is defined more narrowly than “remuneration” is for the different purpose of determining whether a weekly benefit payment should be reduced once a claim has been established. Most importantly, “wages” are limited to monies received for “employment” by an “employer.” These terms are expressly defined to exclude certain kinds of work. “Employer” means “any employing unit *subject to this chapter*” (G.L. c. 151A, § 1(i), emphasis added), and is obviously a subset of the term “employing unit” which is used to define remuneration. “Employment” is defined as “service . . . by an employee for his employer *as provided in this section and in sections two, three, four A, five, six and eight C.*” (Emphasis added.) Thus the term wages excludes income from various categories of work as set forth in the statute, whereas the term remuneration does not exclude those statutory categories.

As the claimant points out, among the statutory categories that are excluded from “employment” and therefore from “wages” is “[s]ervice performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency . . . by an individual receiving such work relief or work training.” G.L. c. 151A, § 6(u). Even assuming that the claimant’s work fell within this exclusion, the exclusion itself would only limit the type of wages that a claimant could use to establish that he earned enough during his base period to

establish a claim. It is clear from the statutory definitions discussed, above, that it does not limit the type of remuneration that might reduce the claimant's weekly benefit.²

We, therefore, conclude as a matter of law that the review examiner's decision, which concluded that the earnings received from the employment unit constituted remuneration, pursuant to G.L. c. 151A, § 1(r)(3), is supported by substantial and credible evidence and free from error of law.

The review examiner's decision is affirmed.

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 30, 2017



Paul T. Fitzgerald, Esq.
Chairman



Judith M. Neumann, Esq.
Member



Charlene A. Stawicki, Esq.
Member

**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.

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² Since the language of the statute clearly sets forth a difference in which types of compensation will count toward establishing a claim, on the one hand, as opposed to reducing a weekly benefit, on the other, it is not necessary to discuss the policies that may underlie these legislative choices. It is sufficient to note that the distinct definitions serve distinct purposes, and the legislature chose to treat the two determinations differently.