

**Board of Review
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Issue ID: 0019 8526 71

ORDER TO REVOKE DENIAL AND FINAL DECISION

On April 11, 2017, the Board of Review issued a decision to deny the claimant's application for review of a hearing decision rendered by a review examiner in the Department of Unemployment Assistance (DUA), dated March 24, 2017. The review examiner's decision disqualified the claimant from receiving unemployment benefits on the ground that the services that the claimant had performed for the employer did not constitute employment, pursuant to G.L. c. 151A, § 6(k). Upon further consideration, the Board believes the review examiner's analysis was incorrect under federal law.

Specifically, the review examiner found that the claimant had completed all of his required course work for his Ph.D. program by the end of the fall, 2015, semester. Finding of Fact # 8. In order for his services to be exempt on the basis of being a student in the employ of a university, federal regulations require that the claimant's services must be for the purpose of pursuing a course of study leading to a degree. 26 C.F.R. § 31.3306(c)(10)-2(d) and (d)(2).¹ Since he had already completed the course work necessary for his Ph.D., the subsequent spring and summer, 2016, assigned courses were not in pursuit of a course of study leading to a degree.

The review examiner further found that the claimant was not required to attend any classes or to follow a syllabus for the course assigned during the spring, 2016, term, and that, while enrolled in the summer, 2016, term course, the claimant was working 60 hours per week. Findings of Fact ## 12 and 14. Federal criteria required to exempt student services also include that the individual be regularly attending classes and that the individual not be performing such services for the employer on a full-time basis, which is defined as 40 or more hours per week. 26 C.F.R. § 31.3306(c)(10)-2(d)(1) and (3)(iii). Thus, because the claimant was not attending classes and he was working full-time hours, the services that he performed for the employer, beginning in January, 2016, were not exempt student services.

We, therefore, conclude as a matter of law that the services performed for the employer during the claimant's base period after January 1, 2016, may not be excluded, under G.L. c. 151A, § 6(k).

¹ State unemployment laws must be in conformance with federal law. 20 C.F.R. § 604.6(a). The state provision for exemption of student services, G.L. c. 151A, § 6(k), is derived directly from a provision under the Federal Unemployment Tax Act, 26 U.S.C. § 3306(c)(10)(B). The federal regulations at 26 C.F.R. § 31.3306(c)(10)-2 establish the Treasury Department's interpretation of 26 U.S.C. § 3306(c)(10)(B).

In the interest of justice, the Board hereby **rescinds** its Denial of Application for Review. The review examiner's decision is reversed. The DUA shall redetermine the claimant's monetary eligibility using the wages paid to the claimant by the employer, beginning January 1, 2017.

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 23, 2017



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

Member Judith M. Neumann, 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.

AB/rh

cc: Carolyn Hunt, DUA Assistant Chief Counsel
Cathianne Taylor, DUA Status Unit