

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: 0020 0521 86

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Margaret Blakely, a review examiner of the Department of Unemployment Assistance (DUA), to deny the claimant benefits from September 4, 2016 through September 17, 2016. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On November 26, 2016, the agency initially determined that the claimant was not entitled to unemployment benefits for the two weeks at issue. The claimant appealed, and both parties attended the hearing. In a decision rendered on August 2, 2017, the review examiner affirmed the agency determination, concluding that the claimant was not in unemployment pursuant to G.L. c. 151A, §§ 29 and 1, for the weeks addressed by the determination. The Board accepts 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 findings of fact are based on substantial and credible evidence in the record.

Although we also agree that the claimant is not in unemployment, and the correct sections of law were applied in the decision, the review examiner's findings and conclusion do not include a proper calculation of her benefits. The review examiner found that the claimant has an unemployment claim, effective October 30, 2016. While this is true, the weeks at issue in this case precede the effective date of that claim. Therefore, the calculation done by the review examiner in Part III of the decision is inapplicable to this case.

After reviewing the claimant's unemployment claims, we take administrative notice of the fact that she had a prior unemployment claim, effective October 25, 2015. Her eligibility for benefits for the two weeks here are dependent upon her benefit rate and earnings disregard on the 2015 claim. For that claim, the claimant's benefit rate was determined to be \$179.00 per week, with an earnings disregard of \$59.67.

The review examiner correctly noted that the total amount paid to the claimant of \$501.61 equates to \$251.31 per week. After subtracting the amount allowed by the earnings disregard,

the claimant still earned over her benefit rate for the weeks at issue. Therefore, she was not in total or partial unemployment, as concluded by the review examiner.

The review examiner's decision is affirmed. The claimant is not eligible to receive benefits for the two weeks beginning September 4, 2016, and September 11, 2016.

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 7, 2017



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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.

SF/rh