

Due to receipt of back pay during certain weeks of his claim, the claimant was not entitled to unemployment benefits.

**Board of Review
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Issue ID: 0021 2938 19

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 the claimant unemployment benefits for the period from October 23, 2016 through January 28, 2017. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On August 14, 2017, the agency initially determined that the claimant was not entitled to unemployment benefits for the period from October 23, 2016, through January 28, 2017. The claimant appealed, and both parties attended the hearing. In a decision rendered on June 21, 2018, the review examiner affirmed the agency determination, concluding that the claimant was not in unemployment for the period of time at issue, because he received back pay in the amount of \$1,100.00 per week and, thus, was disqualified under G.L. c. 151A, §§ 29 and 1. 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 supported by substantial and credible evidence in the record, except for portions of two facts. First, the claimant testified that he was separated on October 17, 2016; however, the review examiner found in Finding of Fact # 1 that the claimant separated on October 7, 2016. This appears to have been a typographical error. Second, the review examiner found that the claimant was paid fourteen weeks of back pay in early 2017, and that he was entitled to about \$1,100.00 per week. Finding of Fact # 5. He then found that the total amount of "back pay" was \$19,171.16. Clearly, the math does not add up. From the record, it sounds like the \$19,171.16 figure was a "lump sum" which included not only back pay but other benefits as well, which the claimant may have lost after he was initially separated in October of 2016. Regardless of the total amount, the \$1,100.00 per week figure is supported by the record.¹

¹ The employer's witness testified that the bi-weekly pay for a patrolman was \$2,202.49.

With these observations in mind, we conclude that the review examiner's original conclusion to deny benefits is free from any error of law affecting substantive rights. The claimant's appeal has presented no persuasive legal argument as to why the conclusion that the claimant was not in unemployment from October 23, 2016, through January 28, 2017 is erroneous. Even if it had some bearing on the legal analysis under G.L. c. 151A, §§ 29 and 1, nothing in this record indicates that the back pay which the claimant received in early 2017 was reduced due to his receipt of unemployment benefits. On the contrary, the testimony was that the claimant received the full patrolman's rate for all of the weeks at issue.

Moreover, the Settlement Agreement submitted with the claimant's appeal, which was signed in May of 2018, specifically states that the claimant was "not entitled to back pay and/or other compensation related to his period of paid administrative leave." It appears from this that the claimant was not entitled to back pay as a sergeant, as suggested by the claimant's appeal, nor was there any agreement in writing regarding the claimant's unemployment compensation. Although the parties gave some testimony that there were discussions about the unemployment compensation prior to the signing of the May, 2018, agreement, nothing about that is mentioned in the agreement itself. We read the agreement as constituting the parties' complete and total understanding regarding the claimant's reinstatement and prior employment. Additionally, although a release of claims is present in the May, 2018, agreement, this does not affect the back pay at issue here, which was awarded to the claimant in early 2017.

Finally, because we do not discern that the claimant's back pay award in early 2017 was "reduced" due to the receipt of unemployment benefits,² the application of G.L. c. 151A, § 69C, is not appropriate. There was no indication in this record that the employer complied with G.L. c. 151A, § 69C(a) or (b), either, suggesting that no "reduction" occurred, but simply a reinstatement with back pay.

² Again, the record (and the claimant's appeal) indicate that the claimant received his full patrolman's pay for the period at issue here.

The review examiner's decision is affirmed. The claimant is denied benefits for the period from October 23, 2016 through January 28, 2017.

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 3, 2018



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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