

**Because the claimant did not perform any services, did not receive any remuneration, and did not refuse any offers of work, he was in total unemployment pursuant to G.L. c. 151A, §§ 29(a) and 1(r) for the week at issue.**

**Board of Review  
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**Issue ID: 0022 0045 35**

## **BOARD OF REVIEW DECISION**

### **Introduction and Procedural History of this Appeal**

The employer appeals a decision by Eric Sullivan, a review examiner of the Department of Unemployment Assistance (DUA), to award unemployment benefits for the week beginning June 11, 2017. 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, and the claim was determined to be effective March 26, 2017. On September 1, 2017, the DUA sent the claimant a Notice of Disqualification, informing him that he was eligible to receive partial unemployment benefits for the week beginning June 11, 2017, and that he had been overpaid \$510.00 for that week. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the claimant, the review examiner overturned the agency's initial determination and awarded total unemployment benefits in a decision rendered on November 15, 2017.

Benefits were awarded after the review examiner determined that the claimant was in total unemployment for the week beginning June 11, 2017, pursuant to G.L. c. 151A, §§ 29(a) and 1(r)(2). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the employer's appeal, we remanded the case to the review examiner to allow the employer an opportunity to provide evidence. Both parties attended the remand hearing. Thereafter, the review examiner issued his consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's conclusion that the claimant is eligible to receive total unemployment benefits for the week beginning June 11, 2017, is supported by substantial and credible evidence and is free from error of law, where the employer offered the claimant no work for that week.

### **Findings of Fact**

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

1. On 9/1/2017, the claimant was issued a Notice of Disqualification under Section 29(b) & 1(r) of the Law stating that since his earnings were less than the weekly benefit rate plus the [earnings] disregard, the claimant was in partial unemployment the week beginning 6/11/2017.
2. The Notice also indicated that the claimant was overpaid \$510 for the week ending 6/17/2017.
3. The claimant opened an unemployment claim which was established with an effective date of 3/26/2017.
4. The claimant was determined to be monetarily eligible for unemployment benefits at the rate of \$742 per week with an earnings disregard of \$247.33.
5. The week of 6/11/2017 through 6/17/2017, the claimant did not work any hours.
6. The subsidiary base period employer did not offer any part-time/on-call hours for which he was hired.
7. The claimant certified for unemployment benefits for the period of 6/11/2017 through 6/17/2017 mistakenly stating that he worked and had earnings of \$756.64.
8. The claimant worked all hours available and did not refuse any work.
9. The employer did not produce any paystubs or records at the Remand Hearing.

### 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.<sup>1</sup> As discussed more fully below, we conclude that there was no error in the review examiner's decision.

In order to be eligible for unemployment benefits for the week beginning June 11, 2017, the claimant must have been in a state of unemployment. Because the claimant did not work at all during that week, the provision of law relating to total unemployment is the most applicable here. G.L. c. 151A, § 29(a), authorizes benefits to be paid to those in total unemployment. Total unemployment is defined at G.L. c. 151A, § 1(r)(2), which provides, in relevant part, as follows:

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<sup>1</sup> Consolidated Finding of Fact # 8 refers to the claimant working "all hours available." Since nothing was offered to him during the week in question, and therefore the claimant did not work, this is technically true. We do not find this to be in conflict with Consolidated Finding of Fact # 5.

“Total unemployment”, an individual shall be deemed to be in total unemployment in any week in which he performs no wage-earning services whatever, and for which he receives no remuneration, and in which, though capable and available for work, he is unable to obtain any suitable work.

As the claimant performed no “wage-earning services,” did not receive any remuneration, and did not refuse any offers of suitable for work for the week beginning June 11, 2017, he was in total unemployment and is entitled to receive benefits.

We, therefore, conclude as a matter of law that the review examiner’s decision to award benefits for the week beginning June 11, 2017, is supported by substantial and credible evidence and free from error of law.

The review examiner’s decision is affirmed. The claimant is entitled to receive benefits for the week beginning June 11, 2017. If the employer has any inquiries regarding the charges to its account for this week, it may contact the DUA’s Employer Charge Section at (617) 626-6350.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - February 27, 2018**



Paul T. Fitzgerald, Esq.  
Chairman



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](http://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