

**Because the claimant is receiving a monthly government pension payment from a plan that both he and his former employer contributed, his weekly benefit amount must be reduced by one-half, and the reduction takes effect with the date that his first pension payment was retroactive to, pursuant to G.L. c. 151A, § 29(d)(6).**

**Board of Review  
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**Issue ID: 0022 7707 96**

## **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 reduce the claimant's weekly unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm in part and reverse in part.

The claimant separated from his position with the employer on October 26, 2016. He filed a claim for unemployment benefits with the DUA, which was approved. However, in a determination issued on September 6, 2017, the DUA reduced that the claimant's weekly benefit amount. 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 and denied the payment of the claimant's full weekly benefit amount in a decision rendered on December 19, 2017. We accepted the claimant's application for review.

The claimant's full weekly benefit amount was reduced after the review examiner determined that the claimant was receiving pension payments from a pension that had been partially funded by both the employer and by the claimant, and, thus, his weekly benefit amounts had to be reduced by half of the pension amount as required under G.L. c. 151A, § 29(d)(6). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we remanded the case to the review examiner to clarify when the claimant began receiving his pension payments, the exact amount, and whether his last year of employment affected these amounts. Only the claimant attended the remand hearing. Thereafter, the review examiner issued her 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, due to the receipt of weekly pension payments, the claimant's weekly benefit amount must be reduced by \$197.00 as of the week beginning October 23, 2016, is supported by substantial and credible evidence and is free from error of law.

### **Findings of Fact**

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

1. The claimant worked for the [Commonwealth] of Massachusetts from December 30, 2002 until October 26, 2016.
2. The claimant separated from the employer due to a lay off.
3. While employed, the claimant contributed to a pension plan offered by the former employer.
4. The claimant's former employer also contributed to the pension plan during the claimant's employment.
5. The claimant's employment during the base period of his claim (October 1, 2015 through September 30, 2016) did affect the claimant's pension amount. The employer utilized the claimant's wages during that period in calculating the claimant's pension amount.
6. The claimant's pension benefits are paid monthly.
7. The claimant receives \$1657.77, before taxes, monthly.
8. The claimant is receiving an average weekly retirement benefit of \$395.00 [sic].
9. The claimant filed an unemployment claim with an effective date of October 23, 2016.
10. At that time, the claimant's weekly benefit rate was determined to be \$742.00.
11. The claimant received his first pension benefit payment on January 31, 2017. The payment was retroactive for the period of October 27, 2016 thru January 31, 2017.

#### 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 original conclusion is free from error of law. After such review, the Board adopts the review examiner's consolidated findings of fact except as follows. The average weekly pension amount of \$395.00 in Consolidated Finding # 8 is either a miscalculation or a typographical error. It should be \$385.00, as explained below. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. Although we agree with the review examiner's legal conclusion that the claimant's weekly benefit amount must be offset because of his pension payment, we conclude that it must be reduced by a slightly lesser amount.

G.L. c. 151A, § 29(d)(6), provides, in pertinent part, as follows:

(d) An individual in unemployment and otherwise eligible for benefits, who is receiving, has received, or will receive payments in the form of retirement benefits, any part of which was financed by a base period employer, shall be paid for each week of unemployment an amount computed as follows: . . .

(6) Notwithstanding any of the foregoing provisions of this subsection, the amount of benefits otherwise payable to an individual for any week which begins in a period with respect to which such individual is receiving governmental or other pension, retirement or retired pay, annuity or any other similar periodic payment which is based on the previous work of such individual, shall be reduced by an amount equal to the amount of such pension, retirement or retired pay, annuity or other payment, which is reasonably attributable to such week; provided, however, . . . such reduction shall apply only if a base period employer contributed to or maintained such pension, . . . and . . . services of the individual for such employer during the base period affected eligibility for or increased the amount of such pension, . . . and provided further, that if the individual contributed to such plan, the amount of benefits otherwise payable to such individual shall be reduced by fifty per cent of the amount of such pension, . . . notwithstanding the amount contributed by the individual to such plan. Payments received under the Social Security Act shall not be subject to this paragraph.

The consolidated findings show that, beginning in January, 2017, the claimant began receiving pension payments from his former government employer and that both the employer and the claimant contributed to his pension plan during his employment. *See Consolidated Findings ## 3, 4, and 11.* They also provide that services which the claimant performed for the employer during the base period of his claim affected his final pension amount. Consolidated Finding # 5. Based upon these findings, the review examiner correctly concluded that G.L. c. 151A, § 29(d)(6), requires that the claimant's weekly benefit amount be reduced by 50% of the amount of his pension payment.

Consolidated Finding # 8 states that the claimant is receiving an average weekly retirement benefit of \$395.00. This is an error. The claimant is paid his retirement benefit monthly in the gross amount of \$1,657.77. Although subsection (6) of G.L. c. 151A, § 29(d), is silent as to how to calculate the weekly pension payment, we refer back to subsection (4), which instructs that the individual's gross monthly retirement benefit be divided by 4.3, disregarding any fractional part of a dollar. When \$1,657.00 is divided by 4.3, the result is \$385.00 and not \$395.00, as found by the review examiner. Because the claimant contributed to his government pension plan, we must reduce his \$742.00 weekly benefit amount by half of the \$385.00 weekly pension payment. Half of \$385.00 is \$192.00.<sup>1</sup> Thus, pursuant to G.L. c. 151A, § 29(d)(6), the claimant's weekly benefit amount of \$742.00 is reduced by \$192.00, not the \$197.00 amount stated in the original hearing decision. He is entitled to a weekly benefit amount of \$550.00.

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<sup>1</sup> Again, following the instructions in G.L. c. 151A, § 29(d)(4), we disregard the fractional part of a dollar.

After remand, the findings further show that the claimant's first pension payment in January, 2017, included pension payments retroactive to October 27, 2016. Consolidated Finding # 11. For this reason, the review examiner correctly concluded that the pension offset began with the week beginning October 23, 2016.

We, therefore, conclude as a matter of law that under G.L. c. 151A, § 29(d)(6), the claimant's weekly benefit amount must be reduced to offset government pension payments made during his benefit year.

The portion of the review examiner's decision that reduced the claimant's weekly benefit amount commencing the week beginning October 23, 2016, is affirmed. The portion of the review examiner's decision that reduced his weekly benefit amount by \$197.00 is reversed. The claimant's weekly benefit amount shall be reduced instead by \$192.00.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - April 25, 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.

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