

**Because the claimant is a teacher receiving her pension from the Massachusetts Teachers' Retirement System, her weekly benefit amount is reduced, pursuant to G.L. c. 151A, § 29(d)(5).**

**Board of Review  
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**Issue ID: 0028 0528 84**

## **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) that the claimant's benefit rate should be reduced based on her receipt of a retirement benefit or pension. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm, but on grounds which differ from those articulated by the review examiner.

The claimant separated from her position with the employer in June of 2018.<sup>1</sup> She filed a claim for unemployment benefits with the DUA, and the effective date of the claim is November 25, 2018. On January 11, 2019, the DUA issued a determination denying benefits pursuant to G.L. c. 151A, G.L. c. 151A, §§ 29 and 1. The claimant appealed, and both parties attended the hearing. However, after considering the information in the record, the review examiner reconvened the hearing and also took evidence pertaining to G.L. c. 151A, § 29(d)(6). In a decision rendered on March 20, 2019, the review examiner modified the agency's determination, concluding that the claimant may receive unemployment benefits but is subject to a deduction of \$571.00 per week pursuant to G.L. c. 151A, 29(d)(6). The claimant appealed to the Board, and we accept the claimant's application for review.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant's benefit rate must be reduced pursuant to G.L. c. 151A, § 29(d)(6), as a result of her receipt of a pension, is based on substantial and credible evidence and free from error of law.

### **Findings of Fact**

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

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<sup>1</sup> Certain information included in our decision that was not specifically referenced in the review examiner's decision, including the circumstances of the claimant's separation, is in the record and undisputed. Therefore, we may properly refer to it in our decision. See Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

1. The claimant filed a new claim for unemployment benefits establishing a base period which began on 10/1/2017 and ended on 9/30/2018. The claimant performed services for the instant employer during this time.
2. The claimant was determined to be monetary eligible for unemployment benefits at the rate of \$795 per week.
3. The claimant receives a monthly pension/retirement benefit from the employer in the amount of \$4912.30. This pension became effective on 7/31/2018.
4. The claimant and the employer both funded the retirement benefits which are held and distributed by the Massachusetts Teachers' Retirement System.

### Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the findings are supported by substantial and credible evidence; and (2) whether the review examiner's conclusion is free from error of law. After such review, the Board adopts the review examiner's findings of fact except for the portion of Finding of Fact # 4 stating that "[t]he claimant and the employer both funded the retirement benefits." In adopting the remaining findings, we deem them to be supported by substantial and credible evidence.

The review examiner applied G.L. c. 151A, § 29(d)(6) in this case. This provision provides, in relevant 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 . . . shall be reduced by an amount equal to the amount of such pension . . . which is reasonably attributable to such week; provided, further, that . . . 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 . . . .

As this portion of the statute indicates, in order for the claimant's benefit rate to be reduced, the base period employer must have contributed to or maintained the pension. The precise way in which the claimant's retirement benefits were funded is unclear from the record. Thus, as noted

above, we rejected the portion of Finding of Fact # 4 which addressed this as not being supported by substantial and credible evidence in the record.

Because there was a lack of evidence as to the funding of the claimant's retirement benefits, the claimant's benefit rate cannot be reduced pursuant to the above-cited provision. However, as a teacher receiving a pension under the Massachusetts Teachers' Retirement System, G.L. c. 151A, § 29(d)(5), applies. That section of law provides:

An unemployed individual who during the base period, performed services as a teacher as defined in section one of chapter thirty-two and who is receiving, has received, or will receive payments in the form of retirement benefits under the provisions of said chapter thirty-two, shall have his weekly benefit rate reduced in accordance with the provisions of this subsection notwithstanding the fact that such payments are not financed in any part by a base period employer.

The claimant fits squarely within the meaning of this provision. First, the review examiner found that the claimant worked for the employer, a town, in her base period. *See* Finding of Fact # 1. Second, there is no dispute that the claimant was a teacher for many years. Third, the review examiner found that the claimant receives her pension through the Massachusetts Teachers' Retirement System. That system is subject to the provisions of G.L. c. 32, which governs the Commonwealth's retirement and pension system. Since she is receiving the pension under the provisions of G.L. c. 32, it does not matter that the town did not contribute to the claimant's pension payments. G.L. c. 151A, § 29(d)(5), requires that her benefit rate be reduced.

As to the amount of the deduction, the review examiner's figure of \$571.00 per week is correct. Under G.L. c. 151A, § 29(d)(1), the benefit rate is reduced by 50 per cent of the amount of the retirement benefits. In this case, the claimant receives \$4,912.30 each month from her pension. This equates to approximately \$1,142.00 per week.<sup>2</sup> Half of this amount is \$571.00, so that much must be deducted each week from the claimant's benefit rate.

We, therefore, conclude as a matter of law that the review examiner's conclusion that the claimant's benefit rate should be reduced by \$571.00 per week due to her receipt of a pension is correct, based on the provisions of G.L. c. 151A, § 29(d)(5), rather than G.L. c. 151A, § 29(d)(6).

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<sup>2</sup> To obtain the average weekly amount of the pension, the total monthly amount is divided by 4.3.

The review examiner's decision is affirmed pursuant to G.L. c. 151A, § 29(d)(5). Effective at the start of her claim, the claimant's benefit rate shall be reduced by \$571.00 per week due to her receipt of a pension based on her years of work as a teacher.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION – April 9, 2019**



Charlene A. Stawicki, Esq.  
Member



Michael J. Albano  
Member

Chairman Paul T. Fitzgerald, 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](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