

**Board of Review
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**Paul T. Fitzgerald, Esq.
Chairman
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Member
Michael J. Albano
Member**

Issue ID: 0031 2574 69

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The employer appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to award the claimant benefits following her change in employment status from full-time to *per diem*, on May 5, 2019. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On July 10, 2019, the agency initially determined that the claimant was not entitled to unemployment benefits. The claimant appealed and both parties attended the hearing, the employer with a representative. In a decision rendered on August 10, 2019, the review examiner reversed the agency determination, concluding that the claimant was “in unemployment” for all but one of the weeks at issue, and, thus, was not disqualified under G.L. c. 151A, §§ 29(a), 29(b), and 1(r).

The Board accepted the employer’s application for review. During our review of the case, we noticed that, due to clerical error, one of the hearings exhibits which had apparently submitted by the employer as a two-sided schedule document (Exhibit 23), had only one side of each page scanned into the DUA’s electronic record-keeping system UI Online. We provided the employer and its representative with an opportunity to send a duplicate copy of that document to the Board (and to the claimant) to perfect the record. Neither the employer nor its representative responded.

Ruling of the Board

After considering the recorded testimony and evidence from the hearing, the review examiner’s decision, and the employer’s appeal, we conclude that the review examiner’s decision is based on substantial evidence and is free from any error of law affecting substantive rights.

Where neither the employer-appellant nor its representative has furnished a duplicate copy of Exhibit 23, as requested, we regard its failure to supply this document as requested to indicate that the missing pages of evidence are not material to its appeal. From this we can also infer the employer’s assent to the review examiner’s findings of fact pertaining to scheduling.¹

¹ Absent any other indication that the review examiner’s decision is not supported by substantial evidence, we see no need to remand the case for an additional hearing just to acquire the missing pages.

The review examiner's decision is affirmed. The claimant is not entitled to benefits for the week ending June 15, 2019. Other than this week, the claimant is entitled to receive benefits for the week ending May 25, 2019, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 30, 2019



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

Member Charlene A. Stawicki, 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.

JC/rh