

0031 6124 70 (Nov. 8, 2019) – The claimant was receiving an extension of weekly benefits under G.L. c. 151A, § 30(c), and then had benefit year income which made him eligible for a new claim. He was required to file a new claim, even though this made his weekly benefit rate lower.

Board of Review
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Issue ID: 0031 6124 70

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), which found him eligible for unemployment benefits, effective July 7, 2019, with a benefit rate of \$173.00 per week. 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 on July 9, 2019. On July 10, 2019, the DUA sent the claimant a monetary determination, which informed him that he was eligible for unemployment benefits. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by the claimant, the review examiner affirmed the agency's initial determination in a decision rendered on October 1, 2019.

The review examiner concluded that the claimant was eligible for an unemployment claim, at a rate of \$173.00 per week pursuant to the provisions of G.L. c. 151A, § 24(a), 1(a), and 1(s). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we accept the claimant's application for review. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's decision to affirm the establishment of a claim, effective July 7, 2019, with a benefit rate of \$173.00 per week is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. On July 12, 2018, the claimant filed an initial claim for unemployment benefits with the Department of Unemployment Assistance (DUA) with an effective begin date of July 8, 2018 and an effective end date of July 6, 2019.

2. A minimum of \$4,700.00 of wages paid in the base period (July 1, 2017 through June 30, 2018) is required to be eligible for unemployment insurance benefits.
3. The claimant was paid \$30,365.29 in wages in the base period (July 1, 2017 through June 30, 2018).
4. The claimant's Weekly Benefits Amount (WBA) for the benefit year, July 8, 2018 through July 6, 2019, was set at \$316.00 per week.
5. The claimant was awarded Section 30 benefits with RED benefits commencing the week beginning May 12, 2019.
6. The claimant worked during the benefit year, July 8, 2018 through July 6, 2019.
7. On July 9, 2019, the claimant filed a new claim for unemployment benefits with the Department of Unemployment Assistance (DUA) with an effective begin date of July 7, 2019 and an effective end date of July 4, 2020.
8. A minimum of \$4,700.00 of wages paid in the base period (July 1, 2018 through June 30, 2019) is required to be eligible for unemployment insurance benefits.
9. The claimant was paid \$13,139.07 in wages in the base period (July 1, 2018 through June 30, 2019).
10. The claimant's Weekly Benefits Amount (WBA) for the benefit year, July 7, 2019 through July 4, 2020, was set at \$173.00 per week. (Exhibit 4)
11. On July 10, 2019, a Monetary Determination was issued to the claimant informing him the \$13,101.57 in wages paid to him in the base period (July 1, 2018 through June 30, 2019) were used to calculate his weekly unemployment insurance benefit amount of \$172.00. (Exhibit 5)
12. On July 16, 2019, the claimant filed an appeal of the Monetary Determination.
13. The claimant did not present any documentation to establish the \$13,139.07 in wages paid to him in the base period (July 1, 2018 through June 30, 2019) was inaccurate.

Ruling of the Board

In accordance with our statutory obligation, we review the record and 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. Upon

such review, the Board adopts the review examiner's findings of fact¹, and deems them to be supported by substantial and credible evidence. As discussed more fully below, we conclude that the review examiner's decision properly applies legal principles.

During the hearing, the claimant did not dispute the wages reported in the base period of the claim effective July 7, 2019. The claimant did not contest the DUA's mathematical calculation that his wages made him eligible for a new claim, with a benefit rate of \$173.00 per week.

The claimant appealed to the Hearings Department and to the Board, because he feels that he should not have been required to file a new unemployment claim in 2019. He asserts that, if he did not, he would have been able to continue collecting Re-employment Extended Duration (RED) benefits on his prior claim at a higher benefit rate of \$316 per week. The claimant testified that he had no knowledge that he would need to file a new claim when his 2018 claim expired. He further testified that his program was approved through July of 2020, and he thought that he would continue to receive the \$316.00 per week through that time.² The claimant's appeal to the Board, in addition to making arguments that the result of this case discourages claimants in approved training programs from working part-time, asserts that he "was not obliged to file a claim for a second benefit year." He further asserts that he "was erroneously informed by DUA that he was required to file a new claim, and that has led to the reduction in his benefits."

This case is resolved by a straightforward application of the DUA's own regulations. 430 CMR 9.06(1) provides, in pertinent part, as follows:

If a claimant is approved to collect benefits under M.G.L. c. 151A, § 30(c) and the benefit year then expires while the claimant is still attending training, a new benefit year claim must be filed and the facts investigated. If, as a result of the new benefit year claim, the claimant is not eligible for the new benefit year claim, the claimant may continue to collect benefits on the old benefit year claim under M.G.L. c. 151A, § 30(c) beyond the benefit year expiration date. If the claimant is eligible for a new benefit year claim, the facts will be investigated and another determination of entitlement to training benefits under M.G.L. c. 151A, § 30(c) will be made on the new claim.³

¹ Findings of Fact ## 10 and 11 contain a discrepancy as to whether the weekly benefit amount is \$172.00 or \$173.00. Compare Exhibit # 4, a monetary summary screen from the DUA's electronic record keeping system, UI Online, which shows \$173.00, with Exhibit # 5, the July 10, 2019 monetary determination, showing a weekly benefit rate of \$172.00. Exhibit # 4 indicates a newer determination date of July 17, 2019. The claimant's base period wages may have been revised at some point after Exhibit # 5 was issued. Our decision does not turn on whether the benefit rate is \$172.00, or \$173.00 per week. We accept the \$173.00 per week figure, as it appears to be the DUA's most recent calculation.

² See Exhibit #13, pp. 2-3, which is the DUA's determination approving the claimant's training program.

³ This provision currently appears in 430 CMR 9.06(1), effective September 20, 2019. It replaces very similar language formerly found in 430 CMR 9.07(1): ". . . If a claimant is approved to collect benefits under M.G.L. c. 151A, § 30(c) and the benefit year expires while the claimant is still attending training and the claimant is not eligible to file a new benefit year claim, the claimant may continue to collect benefits under M.G.L. c. 151A, § 30(c) beyond the benefit year expiration date. If the claimant is eligible to file for a new benefit year claim, the new benefit year claim must be filed and the facts will be investigated and another determination of entitlement to training benefits under M.G.L. c. 151A, § 30(c) will be made on the new claim."

Pursuant to this regulation, the filing of the 2019 claim was mandatory, regardless of whether the claimant was aware that it would happen, or if he still had unclaimed RED benefits on the 2018 claim. It is apparent, through the language of the regulation that the DUA contemplated that a claimant may be eligible for a new claim (presumably with a different benefit rate) while still in a training program. The regulation specifically provides that only if a new claim cannot be filed will the claimant be allowed to continue receiving benefits under the old claim. No part of this regulation allows a claimant to choose to stay on his old benefit rate, if he is required to file a new claim.

This conclusion is also supported by the language of G.L. c. 151A, § 30(c). That section of law allows for the extension of benefits, “by up to 26 times the individual’s benefit rate,” if the claimant is attending an approved training program. The extension is the RED benefits the claimant seeks to continue claiming past the benefit year end date of his 2018 claim. However, the statute further provides that such RED benefits are available “only if such individual has exhausted all rights to regular and extended benefits under this chapter and has no rights to benefits or compensation under this chapter or any other state unemployment compensation law or under any federal law.” In this case, the claimant was eligible for regular benefits on his 2019 claim. Therefore, he had not exhausted his rights to regular compensation, and he could not continue to receive RED benefits under the 2018 claim. *See Cadet v. Comm’r of Division of Unemployment Assistance*, No. 11-P-182, 2011 WL 6820190 (Mass. App. Ct. Dec. 29, 2011), *summary decision pursuant to rule 1:28* (claimant receiving extended benefits under G.L. c. 151A, § 30(c), properly had his weekly benefit rate reduced when benefit year income rendered him eligible for new claim at lower weekly benefit amount).

We, therefore, conclude as a matter of law that the review examiner’s decision to affirm the establishment of a claim, effective July 7, 2019, with a benefit rate of \$173.00 per week is supported by substantial and credible evidence and is free from error of law.

The review examiner’s decision is affirmed.

BOSTON, MASSACHUSETTS
DATE OF DECISION - November 8, 2019



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