

Where the claimant provided credible testimony and evidence regarding missing wages from her base period, the claimant is entitled to a weekly benefit amount of \$238 and a maximum benefit amount of \$6,188, pursuant to G.L. c. 151A, §§ 29(a) and 30(a).

**Board of Review
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Issue ID: 0032 0594 13

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 her eligible for an unemployment claim with a benefit rate of \$213 per week and a maximum benefit amount of \$5,538. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm in part and reverse in part.

The claimant filed a claim for unemployment benefits with the DUA, and the claim was determined to be effective August 11, 2019. On August 27, 2019, the DUA determined that the claimant was monetarily eligible for an unemployment claim with a benefit rate of \$208 per week and a maximum benefit amount of \$5,408. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by the claimant via telephone, the review examiner modified the agency's initial determination, increasing the claimant's weekly benefit rate to \$213 and the claimant's maximum benefit amount to \$5,538. We accepted the claimant's application for review.

The review examiner determined that the claimant was entitled to a weekly benefit rate of \$213, pursuant to G.L. c. 151A, §§ 1 and 29(a), because the claimant's wages in her two highest-earning quarters in the base period were \$5,400 and \$5,671.49. 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 conduct an additional hearing to add new documentary evidence to the record and to make findings specifically about the claimant's gross wages. The claimant attended the remand hearing via telephone. 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 decision, which concluded that the claimant is entitled to a benefit rate of \$213 per week, pursuant to G.L. c. 151A, §§ 1 and 29(a), 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 filed a claim for unemployment benefits effective 08/11/2019.
2. The primary base period of the claimant's claim extends from 07/01/2018 to 06/30/2019.
3. During the primary base period, the claimant was employed by three (3) employers: [Employer A], employer B, and employer C.
4. [Employer A] reported some of the claimant's wages to the Department of Unemployment Assistance ("DUA").
5. In a monetary determination dated 08/27/2019, the DUA initially determined the claimant to be monetary eligible using her primary base period in the amount of \$208 with a maximum benefit amount of \$5,408.
6. [Employer A] did not provide the claimant with any paystubs showing her gross wages. The claimant's regular weekly gross salary from [Employer A] was \$450.00.
7. The claimant's regular weekly net salary from [Employer A] was \$371.59.
8. During the 1st quarter of 2019, [Employer A] issued the claimant thirteen (13) payroll checks each in the net amount of \$371.59.
9. During the 1st quarter of 2019, the claimant's total gross wages from [Employer A] were \$5,850.00.
10. During the 2nd quarter of 2019, [Employer A] issued the claimant eleven (11) payroll checks each in the net amount of \$371.59.
11. During the 2nd quarter of 2019, the claimant's total gross wages from [Employer A] were \$4,950.00.
12. The claimant's primary base period earnings were as follows:

Employer:	3 rd Qtr., 2018	4 th Qtr., 2018	1 st Qtr., 2019	2 nd Qtr., 2019	Total Per Employer:
[Employer A]	\$4,950	\$5,400	\$5,850	\$4,950	\$21,150
Employer B	\$0				\$0
Employer C				\$1,584	\$1,584
Total Per Qtr.	\$4,950	\$5,400	\$5,850	\$6,534	\$22,734

13. The claimant's average weekly wage in the primary base period is \$476.31 (calculated by using the wages of the highest two quarters and dividing by 26, the number of weeks in two quarters).

14. The alternate base period of the claimant's claim extends from 10/01/2018 to 08/10/2019.
15. During the 3rd quarter of 2019 (until 08/10/2019, the day before the effective date of the claim), the claimant earned total gross wages of \$5,104 with employer C. The claimant did not have any other employment in said quarter.
16. The claimant's average weekly wage in the alternate base period is \$476.31 (calculated by using the wages of the highest two quarters and dividing by 26, the number of weeks in two quarters).

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 consolidated findings are supported by substantial and credible evidence; and (2) whether the review examiner's original 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. However, as discussed more fully below, we believe that the review examiner's consolidated findings of fact support the conclusion that the claimant's weekly benefit amount is \$238.

The amount that a claimant is monetarily eligible for unemployment benefits is dictated by her average weekly wage in the base period preceding her unemployment claim. These terms are defined in G.L. c. 151A, § 1, which provides, in relevant part, as follow:

- (a) "Base period", the last four completed calendar quarters immediately preceding the first day of an individual's benefit year [...]
- (w) "Average weekly wage", an amount equal to one twenty-sixth of the total wages reported for an individual in the two highest quarters of his base period [...] If such weekly wage includes a fractional part of a dollar it shall be raised to the next highest dollar.

Based on the effective date of the claimant's unemployment claim, August 11, 2019, the applicable base period is the third quarter of 2018 through the second quarter of 2019. The claimant disputed the accuracy of the wages reported by one of her employers, [Employer A], during the latter two quarters of her base period. At the original hearing, while the claimant was able to provide handwritten paychecks from each week of these two quarters, she was unable to provide paystubs to show her gross wages for these weeks. The review examiner's original decision did not make any findings as to the claimant's gross wages. After remand, the review examiner accepted the claimant's testimony and other evidence about her gross wages from this employer during these two quarters.

The consolidated findings now indicate that these two quarters were the claimant's two highest-earning quarters. She earned \$5,850 in the first quarter of 2019 and \$6,534 in the second quarter of 2019. Based on these amounts, the claimant's "average weekly wage" is calculated as \$477 pursuant to G.L. c. 151A, § 1(a). And pursuant to G.L. c. 151A, § 29(a), a claimant's weekly

benefit rate is calculated as 50% of her average weekly wage, rounded down to the next whole dollar amount. Thus, the claimant's weekly benefit amount is \$238.

Having calculated this amount, we must also re-calculate the claimant's maximum benefit amount as well. Pursuant to G.L. c. 151A, § 30(a), the claimant is eligible to receive a total of 26 times her weekly benefit amount over the course of her unemployment claim¹. Her maximum benefit amount is thus \$6,188.

The review examiner's decision is affirmed in part and reversed in part. During her claim effective August 11, 2019, the claimant is eligible for a weekly benefit amount of \$238 and a maximum benefit amount of \$6,188.

BOSTON, MASSACHUSETTS
DATE OF MAILING - April 13, 2020



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
(See Section 42, Chapter 151A, General Laws Enclosed)**

The last day to appeal this decision to a Massachusetts District Court is ordinarily thirty days from the mail date on the first page of this decision. However, due to the current COVID-19 (coronavirus) pandemic, the 30-day appeal period does not begin until May 4, 2020². If the thirtieth day falls on a Saturday, Sunday, or legal holiday, the last day to appeal this decision is the next business day 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.

JRK/rh

¹ As dictated by a lower unemployment rate, the maximum benefit rate changed from 30 times the weekly benefit amount to 26 times the weekly benefit amount, effective March 31, 2019.

² See Supreme Judicial Court's Order Regarding Court Operations Under the Exigent Circumstances Created by the COVID-19 (CORONAVIRUS) Pandemic, dated 4-1-20.