

**A claimant who filed a claim in July of 2019 is entitled only to a maximum of 26 weeks of benefits. Therefore, a monetary determination, calculating his maximum benefit amount based on 30 weeks of benefits is incorrect, pursuant to G.L. c. 151A, §§ 24(a) and 30(a).**

**Board of Review  
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**Issue ID: 0032 0978 03**

## **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 an unemployment claim with a benefit rate of \$130.00 per week and a maximum benefit amount of \$3,900.00. 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 July 21, 2019. On August 31, 2019, the DUA determined that the claimant was eligible for an unemployment claim with a benefit rate of \$130.00 per week and a maximum benefit amount of \$3,380.00. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by the claimant, the review examiner modified the agency's initial determination, affirming the \$130.00 weekly benefit rate but concluding that the claimant's maximum benefit amount should be \$3,900.00.

The review examiner determined that the claimant was entitled to a maximum of \$3,900.00 in the benefit year of his claim, because this amount represented the lesser of either thirty times the benefit rate or thirty-six percent of the total wages in his base period pursuant to G.L. c. 151A, §§ 24(a) and 30(a). 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 conclusion that the claimant is eligible for an unemployment claim at a rate of \$130.00 per week and a maximum benefit amount of \$3,900.00 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. The claimant filed a 2019 claim for unemployment insurance benefits on 7/24/19. The effective date of the claim is 7/21/19.
2. The primary base period on the claimant's 2018 claim is the third quarter 2018 through the second quarter 2019 (7/01/18 through 6/30/19).
3. The claimant worked for one employer in the base period of his 2019 claim.
4. The claimant was paid \$3,142.84 in wages in the third quarter 2018.
5. The claimant was paid \$3,374.28 in wages in the fourth quarter 2018.
6. The claimant was paid \$3,256.82 in wages in the first quarter 2019.
7. The claimant was paid \$3,369.56 in wages in the second quarter 2019.
8. The claimant was paid a total of \$13,143.50 in wages in the primary base period of his 2019 claim.
9. The claimant has not had any employment since 6/29/19.
10. The DUA determined that the claimant's weekly benefit amount is \$130.00. The DUA determined that the claimant's maximum benefit amount is \$3,380.00. The claimant appealed this determination.

### 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. After such review, the Board adopts the review examiner's findings of fact except for the first date noted in Finding of Fact # 2. The claim at issue is the claimant's 2019 unemployment claim, as indicated in Finding of Fact # 1. The reference to the claimant's 2018 claim appears to be a typographical error. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. As discussed more fully below, we conclude the DUA's initial determination was correct. Therefore, we reject the review examiner's conclusion that the claimant is entitled to a maximum benefit amount of \$3,900.00 during his benefit year.

To be eligible for an unemployment claim, the claimant must have been paid a sufficient amount of wages in the base period. This requirement is taken from G.L. c. 151A, § 24(a), which provides, in relevant part, that a claimant must:

[h]ave been paid wages in the base period amounting to at least thirty times the weekly benefit rate; provided, however, that for the period beginning on January first, nineteen hundred and ninety-five the individual has been paid wages of at least two thousand dollars during said base period; provided, further, that said amount shall be increased annually proportionately, rounding to the nearest one

hundred dollars, to any increases which have occurred during the prior calendar year in the minimum wage as set forth in section one of chapter one hundred and fifty-one; and, provided further, that any such increase shall be effective beginning on the first Sunday in January.

Due to increases in the minimum wage, for claims effective in 2019, the minimum base period wage requirement is \$4,700.00. Here, the claimant was paid \$13,143.50 in wages during the base period. Thus, he satisfies this statutory requirement. However, he still must have been paid thirty times his weekly benefit rate.

The benefit rate amounts to fifty percent of a claimant's average weekly wage. G.L. c. 151A, § 29(a). For an individual with more than two quarters of wages, such as the claimant, the average weekly wage is an amount equal to "one twenty-sixth of the total wages reported for an individual in the two highest quarters of his base period." G. L. c. 151A, § 1(w). As found by the review examiner, the claimant's two highest quarters of wages are the fourth quarter of 2018 and the second quarter of 2019. Adding the quarterly wages together, dividing by twenty-six (to get the average weekly wage), and then dividing again by two gives a benefit rate of \$130.00 per week. Thirty times this amount is \$3,900, and the claimant was certainly paid more than that in his base period. Therefore, he is monetarily eligible for the claim.

The maximum benefit amount (also called the benefit credit) is calculated according to the provisions of G.L. c. 151A, § 30(a). That section provides, in relevant part, as follows:

[T]he total benefits which an unemployed individual may receive during his benefit year shall be an amount equal to thirty-six percent of his wages in the base period, or an amount equal to thirty times his benefit rate, whichever is less, plus dependency benefits payable under section 29; provided, however, that if in any month the average local unemployment for the last 12 months, as determined by the United States Department of Labor is equal to or below 5.1 per cent in each of the 10 metropolitan statistical areas of the commonwealth, the total benefits which an unemployed individual who then files a claim may receive during his benefit year shall be an amount equal to 36 per cent of his wages in the base period or an amount equal to 26 times his benefit rate, whichever is less, plus dependency benefits payable under said section 29 . . . .

The review examiner correctly noted that thirty-six percent of the claimant's base period wages is \$4,731.66. He then noted that thirty times the claimant's weekly benefit amount is \$3,900.00. However, the review examiner used incorrect figures for this second calculation. When claimants are potentially eligible for thirty weeks of benefits, it is appropriate to multiply the benefit rate by thirty pursuant to G.L. c. 151A, § 30(a). However, for claims effective in July of 2019, claimants were no longer eligible for a maximum of thirty weeks of benefits. The unemployment rate had dropped to a level such that the total potential weeks of benefits could only be twenty-six.<sup>1</sup> Thus, the correct comparison is between \$4,731.66 (thirty-six percent of the base period wages) and twenty-six times \$130.00 (the weekly benefit rate), which is \$3,380.00.

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<sup>1</sup> The change to the maximum number of weeks of benefits was effective for claims filed on or after March 31, 2019.

The claimant's maximum benefit amount is the lesser of these two figures. Thus, the claimant is entitled to a maximum benefit amount of \$3,380.00, not \$3,900.00 as calculated by the review examiner.

We, therefore, conclude as a matter of law that the review examiner's decision finding the claimant eligible for an unemployment claim with a benefit rate of \$130.00 per week and maximum benefit amount of \$3,900.00 was not supported by substantial and credible evidence or free from error of law, because the review incorrectly calculated the claimant's maximum benefit amount, which should be \$3,380.00.

The review examiner's decision is affirmed in part and reversed in part. The DUA's initial determination is reinstated. The claimant is eligible for a claim, effective July 21, 2019, with a weekly benefit amount of \$130.00 per week and a maximum benefit amount of \$3,380.00.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION – January 2, 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 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