

Because the claimant would be entitled to a benefit credit more than ten percent higher than the benefit credit using his primary base period, the claimant can use his alternate base period to establish a claim for benefits, pursuant to G.L. c. 151A, §§ 1, 24, and 30.

**Board of Review
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Issue ID: 0032 5313 49

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 the claimant eligible for an unemployment claim using his primary base period. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm the conclusion that the claimant is monetarily eligible for an unemployment claim. However, we conclude that the claimant may use his alternate base period to establish his claim.

The claimant filed a claim for unemployment benefits with the DUA, and the claim was determined to be effective January 20, 2019.¹ On October 19, 2019, the DUA sent the claimant a Monetary Redetermination, which stated that the claimant was monetarily eligible for a claim with a benefit rate of \$239.00 and a total benefit credit of \$4,847.00. The claimant appealed the redetermination to the DUA hearings department. Following a hearing on the merits, attended by the claimant, the review examiner affirmed the agency's redetermination in a decision rendered on December 12, 2019. In reaching his conclusions, the review examiner determined that the facts of the case were not in dispute and the claimant was eligible for an unemployment claim as indicated in the Monetary Redetermination, pursuant to the provisions of G.L. c. 151A, §§ 1 and 24(a).

After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we accepted the claimant's application for review and remanded the case to the review examiner to take additional evidence as to whether the claimant's alternate base period may be utilized as the basis for the claimant's unemployment claim. The claimant attended the remand hearing. Thereafter, the review examiner issued his 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 conclusion that the claimant is monetarily eligible for a claim, using the primary base period rather than the alternate base period, is supported by substantial and credible evidence and is free from error of law, given that

¹ Initially, the claim was determined to be effective in April of 2019. However, the claimant requested a pre-date of the claim, which the DUA granted.

the claimant provided evidence that he was paid \$2,610.00 from January 1, 2019, through January 19, 2019.

Findings of Fact

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

1. The claimant, at his request, obtained a predate to obtain an effective date of 01/20/19.
2. The wages earned during the base period from 01/01/18 through 12/31/18 are not in dispute. The claimant worked for four total base period employers earning total gross base period wages of \$13,465.75.
3. On 10/19/19, the claimant, due to his obtaining a predate, was sent a Monetary Redetermination noting that he was eligible for weekly benefits of \$239.00 with an earnings exclusion amount of \$76.67.
4. On 10/21/19, the claimant was sent a letter from DUA regarding his alternate base period. The claimant received this letter but did not understand it. The claimant called DUA with questions but he kept being transferred without getting answers so he became frustrated and he did not provide any information to DUA in response to the 10/21/19 letter.
5. During the period from 01/01/2019 through 01/19/2019, the claimant was paid total gross wages from his employer [Employer A] of \$2,610.00.
6. On 01/04/2019, the claimant was paid gross wages of \$690.00 for the period from 12/24/2018 to 12/30/2018.
7. On 01/11/2019, the claimant was paid gross wages of \$720.00 for the period from 12/31/2018 to 01/06/2019.
8. On 01/18/2019, the claimant was paid gross wages of \$1,200.00 for the period from 01/07/2019 to 01/13/2019.
9. Later on 02/25/2019, the claimant was paid gross wages of \$1,200.00 for the period from 01/14/2019 to 01/20/2019.

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. As discussed more

fully below, we conclude that the claimant is eligible for an unemployment claim, effective January 20, 2019, using his alternate base period.

G.L. c. 151A, § 24, provides, in pertinent part, as follows:

An individual, in order to be eligible for benefits under this chapter, shall—

(a) Have 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

To be monetarily eligible for a claim under this statute at the time the claimant filed for unemployment benefits, he must have been paid wages of at least \$4,700.00 in the base period.² He must also have been paid wages in his base period which amount to 30 times the weekly benefit rate.

G.L. c. 151A, § 1(a), defines base period, in relevant part, as follows:

“Base period”, the last four completed calendar quarters immediately preceding the first day of an individual’s benefit year; provided, however that if an individual as a result of the above provision does not meet the requirement of clause (a) of section twenty-four, or has reason to believe that he would be eligible for an increase of ten percent or more in his total benefit credit as defined in subsection (a) of section thirty, if his base period was calculated using the last three completed calendar quarters and any weeks in which wages were paid to the individual during the incomplete calendar quarter in which the individual files a claim, . . . then the term “base period” shall mean the last three completed calendar quarters and any weeks in which wages were paid to the individual in the incomplete calendar quarter in which the individual files a claim for benefits; provided, further, that if a claimant received weekly compensation for temporary total disability under the provisions of chapter one hundred and fifty-two . . . for more than seven weeks within the base period, as heretofore defined, his base period shall be lengthened by the number of such weeks, but not to exceed fifty-two weeks, for which he received such payments

According to this definition, in this case, the primary base period, which includes the last four completed calendar quarters prior to January 20, 2019, stretches from January 1, 2018, through December 31, 2018. The alternate base period, which includes the uncompleted quarter in which

² G.L. c. 151A, § 24(a) states that a claimant must have earned \$2,000.00 in the base period. However, this amount has been changed, as required under the statute, based on changes to the Commonwealth’s minimum wage.

the claimant filed his claim (the first quarter of 2019) plus the three completed quarters prior to that, would be the period from April 1, 2018, through January 19, 2019.³

At the time the Monetary Redetermination was issued, the DUA informed the claimant that if he had wages in the period from January 1, 2019, through January 19, 2019, of at least \$1,345.37, he could use the alternate base period. *See* Remand Exhibit 7. Because the claimant did not respond to the DUA's inquiry regarding his alternate base period, *see* Consolidated Finding of Fact # 4, the DUA used the claimant's primary base period to establish his claim. As indicated in the review examiner's consolidated findings of fact, this resulted in a weekly benefit rate of \$239.00 per week. It also meant that the maximum amount of benefits the claimant could receive in his benefit year (his total benefit credit) was \$4,847.00. *See* Exhibit 4.⁴

During the remand hearing, the claimant provided substantial evidence that he was paid \$2,610.00 during the period from January 1, 2019, through January 19, 2019. *See* Consolidated Findings of Fact ## 5–8 and Remand Exhibit 11. Under G.L. c. 151A, § 1(a), the alternate base period may be used if the claimant “has reason to believe that he would be eligible for an increase of ten percent or more in his total benefit credit as defined in subsection (a) of section thirty” and he provides evidence of his wages in the uncompleted calendar quarter in which he filed his claim. *See also* 430 CMR 4.85(1)(b).

Again, to be monetarily eligible for a claim, the claimant must have been paid at least thirty times his weekly benefit rate in the alternate base period and also must have been paid at least \$4,700.00 in the alternate base period. The benefit rate is equal to fifty percent of a claimant's average weekly wage. *See* G.L. c. 151A, § 29(a). The average weekly wage is defined as “an amount equal to one twenty-sixth of the total wages reported for an individual in the two highest quarters of his base period; provided that if wages reported include not more than two quarters in said base period, his weekly wage shall be deemed to be one thirteenth of the total reported for the highest quarter.” G.L. c. 151A, § 1(w).

The claimant's alternate base period contains four quarters of wages: the second quarter of 2018 (\$1,058.50), the third quarter of 2018 (\$7,392.00), the fourth quarter of 2019 (\$5,015.25), and the first quarter of 2019 (\$2,610.00). In total, the claimant was paid \$16,075.75 in the alternate base period. The two highest quarters are the third and fourth quarters of 2018, and, together, those total \$12,407.25. This amount divided by twenty-six is \$477.20. This is the average weekly wage. The average weekly wage divided by two is \$238.60, or \$239.00.⁵ This is the benefit rate. Thirty times the benefit rate is \$7,170.00. This is less than the total amount of wages paid in the claimant's entire alternate base period. Thus, the claimant meets both requirements of G.L. c. 151A, § 24(a).

³ The period beginning January 20, 2019 is the benefit year of the claim. *See* G.L. c. 151A, § 1(c). Any wages paid to the claimant on or after that date cannot be used to establish his claim.

⁴ We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. *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).

⁵ Per G.L. c. 151A, § 1(w), “[i]f such weekly wage includes a fractional part of a dollar it shall be raised to the next highest dollar.”

However, per the statute cited above, the claimant can only use the alternate base period if doing so would result in a ten percent increase in his total benefit credit. Currently, under G.L. c. 151A, § 30(a), the total benefit credit is the lesser of two amounts: thirty-six percent of his wages in the alternate base period or twenty-six times the benefit rate. Here, twenty-six times \$239.00 is \$6,214.00. Thirty-six percent of the alternative base period wages, \$16,075.75, is \$5,787.27. So, his total benefit credit using the alternate base period would be \$5,787.00.⁶ Compared with the \$4,847.00 benefit credit of the primary base period, using the alternate base period gives the claimant at least ten percent more in his benefit credit. Thus, he is eligible to use the alternate base period.

We, therefore, conclude as a matter of law that the review examiner's conclusion that the claimant is eligible for an unemployment claim is supported by substantial and credible evidence and free from error of law. However, he is entitled to use his alternate base period to establish a claim, with a benefit rate of \$239.00 per week.

The review examiner's decision is affirmed in part and reversed in part. The claimant is monetarily eligible for an unemployment claim using his alternate base period, with a benefit rate of \$239.00 per week and a total benefit credit of \$5,787.00.

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 13, 2020



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 (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.

⁶ Under G.L. c. 151A, § 30(a), "[i]f such amount includes a fractional part of a dollar, it shall be rounded to the next lower full dollar amount."

SF/rh