

**The claimant was not entitled to benefits in this new benefit year because he was not paid wages for services rendered to an employer in his previous benefit year.**

**Board of Review  
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**Issue ID: 0033 6578 67**

### Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to deny unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

The claimant separated from his position with the employer on January 24, 2019. He filed a claim for unemployment benefits with the DUA, which was approved and he collected benefits under this 2019-01 claim. He subsequently filed a new claim for benefits, his 2020-01 claim, which was denied in a determination issued on January 27, 2020. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the claimant, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on March 24, 2020. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not paid sufficient wages in the base period to be eligible for unemployment benefits and, thus, was not monetarily eligible under G.L. c. 151A, § 24(a). 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 obtain further information about the claimant's wages and to provide the claimant with notice of other relevant sections of law. 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 decision, which concluded that the claimant was not monetarily eligible for benefits, 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 worked until January 24, 2019, at which time his employment ended due to a buy-out by another entity.

2. The claimant filed a claim with an effective date of January 27, 2019 (and BYE of January 25, 2020). The claimant's base period ran from January 1, 2018 to December 31, 2018. The claimant had earnings in the first three quarters of 2018 to establish a claim for benefits at the maximum benefit rate. The claimant had no earnings in the fourth quarter of 2018 because he was on an unpaid leave of absence.
3. Upon the expiration of his 2019 claim, the claimant filed a new claim for unemployment benefits with an effective date of January 26, 2020.
4. The primary base period ran from January 1, 2018 [sic] to December 31, 2019.
5. The claimant had wages of \$102,058.62 in the 1st Quarter of 2019.
6. The claimant had no wages in the 2nd Quarter of 2019.
7. The claimant had no wages in the 3rd Quarter of 2019.
8. The claimant had no wages in the 4th Quarter of 2019.
9. The claimant did not perform any wage-earning services with any employer since January 27, 2019.
10. On January 24, 2019, the claimant's stocks in his employer were sold due to the buy-out with a total proceed amount of \$27,825.00.
11. The claimant resold Celtics tickets in 2019 and received a 1099K reflecting a gross amount of \$3,202.86.
12. On February 7, 2019, the claimant won \$1,000 from the state lottery and was issued a W-2G.

### 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. After such review, the Board adopts the review examiner's consolidated findings of fact except as follows. We note that Consolidated Finding # 4 states that the claimant's base period ran from January 1, 2018, to December 31, 2019, which we believe to be a typographical error. It is clear from Consolidated Findings ## 5, 6, 7, and 8, which describe wages earned in the four quarters of 2019, that the review examiner intended Consolidated Finding # 4 to explain that the claimant's primary base period ran from January 1, 2019, to December 31, 2019. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. As discussed more fully below, we agree that the claimant is ineligible for benefits.

Because the claimant filed the instant claim for unemployment benefits immediately after the expiration of his prior claim, he must satisfy the requirements of G.L. c. 151A, § 31, in order to be eligible to apply for benefits under the new claim. G.L. c. 151A, § 31, provides as follows:

No individual may receive benefits in a subsequent benefit year unless, since the beginning of the previous benefit year during which he received benefits, he performed service for an employer subject to this chapter and has been paid wages for such service of not less than three times his weekly benefit rate for said previous benefit year.

For the claimant's first claim (2019-01), the benefit year ran from January 27, 2019, to January 25, 2020. Consolidated Finding # 2. In order to satisfy the requirements of G.L. c. 151A, § 31, and be eligible to apply for benefits in a subsequent benefit year (the 2020-01 claim), the claimant must have performed services for an employer and been paid wages for such services in an amount not less than three times his weekly benefit rate on or after January 27, 2019. He has not.

The claimant last worked for his previous employer on January 24, 2019, and has not performed any wage-earning services for any employer since that date. Consolidated Findings ## 1 and 9. The findings provide that the claimant received the proceeds of a company stock sale on January 24, 2019. This sale occurred prior to the commencement of the claimant's benefit year and thus the proceeds cannot be used by the claimant to satisfy the wage-earning requirements of G.L. c. 151A, § 31. We further note that there is no indication that the revenue from the sale of stocks referenced in Consolidated Finding # 10 represented qualifying continuation pay from the claimant's former employer. *See Ruzicka v. Comm'r of Department of Employment and Training*, 36 Mass. App. Ct. 215 n. 7 (1994) (service is deemed to be performed during whatever period of time the continuation pay is applied to). Similarly, neither the sale of the Celtic's tickets, the claimant's personal property, nor his lottery winnings are relevant to our analysis under § 31, as they had nothing to do with the claimant's employment. *See Consolidated Findings ## 11 and 12.*

We, therefore, conclude as a matter of law that claimant is not entitled to benefits because he has not performed wage-earning services since the beginning of his previous benefit year, as required under G.L. c. 151A, § 31.

The review examiner's decision is affirmed. The claimant is not eligible for benefits under his 2020-01 claim.



**BOSTON, MASSACHUSETTS**

Paul T. Fitzgerald, Esq.  
Chairman

**DATE OF DECISION - September 25, 2020**



Charlene A. Stawicki, Esq.  
Member

**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 July 1, 2020<sup>1</sup>. 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](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.

LSW/rh

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<sup>1</sup> See Supreme Judicial Court's Second Updated Order Regarding Court Operations Under the Exigent Circumstances Created by the COVID-19 (coronavirus) Pandemic, dated 5-26-20.