

Because the claimant signed a release of claims in order to get his severance pay, it was not remuneration within the meaning of G.L. c. 151A, § 1(r)(3).

**Board of Review
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**Issue ID: 0033 6588 20
Claimant ID: 10843184**

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 for the weeks ending February 8, 2020, through June 20, 2020. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant separated from employment January 31, 2020. He filed a claim for unemployment benefits with the DUA, which was determined to be effective February 2, 2020. On February 25, 2020, the DUA sent the claimant a Notice of Disqualification, informing him that due to the receipt of remuneration from his employer, he was disqualified from receiving benefits from February 2, 2020 through June 27, 2020. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the claimant,¹ the review examiner affirmed the agency's determination and denied benefits from February 2 through June 20, 2020, in a decision rendered on April 4, 2020. We accepted the claimant's application for review.²

Benefits were denied after the review examiner determined that the claimant received remuneration pursuant to G.L. c. 151A, § 1(r)(3), and, thus, he was disqualified from receiving benefits under G.L. c. 151A, §§ 29 and 1(r). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we took this case for review. Our decision is based upon our review of the entire record, including a copy of the Separation Agreement and General Release of claims which the claimant attached to his appeal to the Board.³

The issue before the Board is whether the review examiner's decision, which concluded that the employer's \$27,328.00 lump sum severance payment was disqualifying remuneration under G.L. c. 151A, § 1(r)(3), is supported by substantial and credible evidence and is free from error of law, where the claimant has produced a release of claims which he had to sign in order to receive that payment.

¹ The DUA invited the employer to participate in the hearing in this case as a witness only.

² The claimant's appeal to the Board was timely filed, postmarked on April 17, 2020. However, the appeal was inexplicably not delivered to the Board until January 19, 2021.

³ Because the employer is not an interested party with regard to this case, it has no right to object to the evidence proffered by the claimant. We decline to further delay disposition of this case in order to formally admit the claimant's severance agreement into evidence.

Findings of Fact

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

1. The claimant filed an initial claim for unemployment benefits effective February 2, 2020.
2. The claimant worked full time as a District Manager for the employer from October 11, 2019 until January 31, 2020, when he was separated from work due to the sale of the business.
3. The claimant worked Monday through Friday from 8:00 a.m. to 5:00 p.m.
4. The claimant was paid an annual base salary of \$72,000.00. The claimant was also paid bonus monies.
5. The claimant worked from his home. The claimant managed several of the employer's store locations.
6. On February 6, 2020, the employer paid the claimant a lump sum severance payment in the gross amount of \$27,328.00, which represented the maximum amount offered of 20 weeks of pay, based on the claimant's length of service.
7. The employer did not require the claimant to sign a release of claims to receive any of the severance pay.
8. The sale of the business was not considered a qualified plant closing under the unemployment law.
9. On February 25, 2020, the Department of Unemployment Assistance issued the claimant a Notice of Disqualification under Section [sic] 1(r)(3) of the Law for the period beginning February 2, 2020 through June 27, 2020.

Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the findings of fact 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 findings of fact except for Finding # 7. Where the claimant has produced a copy of the Separation Agreement and General Release with his appeal, our review of this document clearly shows that the employer did require the claimant to sign a release of claims to receive severance pay. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. Consequently, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant's severance payment was disqualifying remuneration.

In order for the claimant to receive unemployment benefits, he must be in some state of unemployment. G.L. c. 151A, § 29(b), authorizes benefits to be paid to those in partial unemployment. Partial unemployment is defined at G.L. c. 151A, § 1(r)(1), which provides, in relevant part, as follows:

“Partial unemployment”, an individual shall be deemed to be in partial unemployment if in any week of less than full-time weekly schedule of work he has earned or has received aggregate remuneration in an amount which is less than the weekly benefit rate to which he would be entitled if totally unemployed during said week; . . .

G.L. c. 151A, § 29(a), authorizes benefits to be paid to those in total unemployment. Total unemployment is defined at G.L. c. 151A, § 1(r)(2), which provides, in relevant part, as follows:

“Total unemployment”, an individual shall be deemed to be in total unemployment in any week in which he performs no wage-earning services whatever, and for which he receives no remuneration, and in which, though capable and available for work, he is unable to obtain any suitable work. . . .

The review examiner’s findings indicate that, upon being separated from his former employer on January 31, 2020, the claimant ceased performing any services. The question before us is whether, even though the claimant did not work for the employer, he still continued to receive remuneration. If he did not receive remuneration, he was in total unemployment. If he received remuneration that was less than his weekly benefit rate,⁴ then he was in partial unemployment.

Remuneration is defined, in relevant part, at G.L. c. 151A, § 1(r)(3), as the following:

[A]ny consideration, whether paid directly or indirectly, including salaries, commissions, and bonuses, and reasonable cash value of board, rent, housing, lodging, payment in kind and all payments in any medium other than cash, received by an individual (1) from his employing unit for services rendered to such employing unit; (2) as net earnings from self-employment, and (3) as termination, severance or dismissal pay, or as payment in lieu of dismissal notice, whether or not notice is required, or as payment for vacation allowance during a period of regular employment; provided, however, that for the purposes of this chapter, "remuneration" shall not include any payments made pursuant to subsections (b) and (c) of section one hundred and eighty-three, and subsection (b) of section one hundred and eighty-four of chapter one hundred and forty-nine, nor shall it include payment for unused vacation or sick leave, or the payment of such termination, severance or dismissal pay, or payment in lieu of dismissal notice, made to the employee in a lump sum in connection with a plant closing, nor shall this clause affect the application of subsection (d) of section twenty-nine.

⁴ The DUA’s electronic record-keeping system, UI Online, shows that the claimant’s weekly benefit rate for this claim was \$ 785.00.

As a general rule, G.L. c. 151A, § 1(r)(3), disqualifies a claimant from benefits while receiving severance, separation, or dismissal pay. The Massachusetts Appeals Court has held that payments made to a severed employee in return for a general release of claims, however, are not disqualifying remuneration within the meaning of G.L. c. 151A, § 1(r)(3). White v. Comm'r of Department of Employment and Training, 40 Mass. App. Ct. 249, 252–253, *further app. rev. den'd.* (1996). Thus, if the claimant signed such a release of claims, his employer's \$27,328.00 lump sum payment will not be considered to be remuneration and he will be in total unemployment.

The Separation Agreement and General Release (Separation Agreement) furnished by the claimant on appeal shows that the claimant signed this document on October 7, 2019, and it was countersigned by his manager. Section II(D)(a) of the Separation Agreement clearly requires the claimant to release the employer of any potential claims he might have had against the employer, in order to receive his severance payment. On this record, we are satisfied that the claimant's lump sum severance payment is not remuneration within the meaning of G.L. c. 151A, § 1(r)(3), because it was paid in consideration for signing the type of release of claims described in White.

The review examiner's decision is reversed. The claimant is not subject to disqualification pursuant to G.L. c. 151A, §§ 29 and 1(r), for the period of time beginning February 2, 2020, through June 20, 2020, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - February 5, 2021



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

Member Charlene A. Stawicki, Esq. did not participate in this decision.

If this decision disqualifies the claimant from receiving regular unemployment benefits, the claimant may be eligible to apply for Pandemic Unemployment Benefits (PUA). The claimant may contact the PUA call center at (877) 626-6800 and ask to speak to a Tier 2 PUA Supervisor.

**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.

JPCA/rh