

Claimant federal employee was suspended indefinitely upon indictment. He is not subject to state statutes precluding state & municipal employees from collecting unemployment benefits. He was eligible for one week of benefits while on unpaid suspension, prior to his resignation for retirement.

**Board of Review
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Issue ID: 0034 1213 94

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. We reverse and conclude that the claimant eligible for one week of benefits under the applicable law before us.

The claimant was suspended from his position with the employer on February 6, 2020. He filed a claim for unemployment benefits with the DUA on March 1, 2020, which was effective March 8, 2020, and which was denied in a determination issued on May 6, 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 November 23, 2020. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was precluded from receiving unemployment benefits under G.L. c. 268A, § 25, while on an indefinite suspension because of an indictment for misconduct in office. 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 take additional testimony and evidence from the claimant. Only the claimant attended the remand hearing. 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's indictment by a federal grand jury precluded him from receiving unemployment benefits while on an indefinite disciplinary suspension, is supported by substantial and credible evidence and is free from error of law, where the claimant is an employee of the federal government.

Findings of Fact

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

1. The claimant worked as a Lieutenant for the employer, the federal [Employer A], from 10/17/93 until 2/6/20 when he was notified that he was being placed on an indefinite paid suspension pending an investigation. The claimant was subsequently informed on 3/9/20 that his suspension would be without pay thereafter. The claimant's suspension was as a result of the claimant being indicted.
2. The claimant was hired to work full time varying hours, earning \$42.00 an hour.
3. An incident involving the claimant occurred in June of 2019. The claimant was reassigned his position pending an investigation. Once he was reassigned the claimant had petitioned his Supervisor to interview him and allow him to provide documentation for the investigation. The claimant was never contacted or questioned.
4. On 2/5/20, the claimant was informed by the Federal Bureau of Investigations (FBI) that he was indicted by a secret [sic] grand jury. The indictment was for [allegedly] obstructing a federal proceeding by aiding and abetting, destruction, alteration and falsification of records in a federal investigation.
5. When the claimant was informed of the indictment, he filed his retirement papers. His retirement paperwork was filed on 3/14/20. (Retirement Paperwork - Remand Exhibit 5, 5 pages.) His retirement became effective as of 5/1/20. The claimant decided to retire at the time that he did because he had no income and health insurance. He had the opportunity to retire and felt he had no other option unless he filed for unemployment or public assistance.
6. When the claimant's suspension became unpaid, the claimant filed a claim for unemployment benefits with an effective date of 3/8/20.
7. The indictment is still pending, there had been no change in the status of the indictment [as of the remand hearing convened on February 4, 2021]. The claimant believes he will not be going to court until 2022. The claimant pleaded not guilty to the charges.

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 reject the review examiner's legal conclusion that the claimant's eligibility for benefits is controlled by G.L. c. 268A, § 25, or G.L. c. 30, § 59, and conclude that he is eligible for one week of benefits under G.L. c. 151A, § 25(f), as outlined below.

The review examiner disqualified the claimant under G.L. c. 268A, § 25, which precludes county and municipal employees suspended due to indictment from receiving unemployment compensation benefits, and G.L. c. 30, § 59, which applies a similar prohibition to state employees. This was an error of law. Because the claimant is a federal employee, neither of these statutes apply to his situation.

The claimant stopped working when he was placed on a suspension. His eligibility for benefits during the period of his suspension is, thus, properly analyzed pursuant to G.L. c. 151A, § 25(f), which provides as follows:

[No waiting period shall be allowed and no benefits shall be paid to an individual pursuant to this chapter] . . . (f) For the duration of any period, but in no case more than ten weeks, for which he has been suspended from his work by his employing unit as discipline for violation of established rules or regulations of the employing unit.

Application of G.L. c. 151A, § 25(f), is further explained by regulation. 430 CMR 4.04(4), provides, in pertinent part, as follows:

A claimant who has been suspended from his work by his employing unit as discipline for breaking established rules and regulations of his employing unit shall be disqualified from serving a waiting period or receiving benefits for the duration of the period for which he or she has been suspended, but in no case more than ten weeks, provided it is established to the satisfaction of the Commissioner that such rules or regulations are published or established by custom and are generally known to all employees of the employing unit, that such suspension was for a fixed period of time as provided in such rules or regulations, and that a claimant has a right to return to his employment with the employing unit if work is available at the end of the period of suspension.

In the present case, the findings show that after learning of the claimant's indictment, the employer placed him on an indefinite suspension pending the resolution of the indictment on February 6, 2020. *See Consolidated Finding of Fact # 1.* Because the claimant's disciplinary suspension was indefinite, 430 CMR 4.04(4) provides that the claimant may not be denied unemployment benefits for the period of his suspension.

The employer initially placed the claimant on a paid suspension. During this period, the claimant did not apply for unemployment benefits. However, the employer notified him that his suspension would be unpaid as of March 9, 2020. *See Consolidated Finding of Fact # 1.* Thereafter, the claimant submitted his retirement paperwork, separated from employment, and filed for unemployment benefits on March 14, 2020. *See Consolidated Finding of Fact # 5 and Remand Exhibit # 5.* The claimant's unemployment claim is effective March 8, 2020. He certified for one week of benefits while he was on his unpaid suspension.

We, therefore, conclude as a matter of law that the claimant is entitled to receive unemployment benefits for the week ending March 14, 2020, pursuant to G.L. c. 151A, § 25(f).

The review examiner's decision is reversed. Neither G.L. c. 268A, § 25, nor G.L. c. 30, § 59, is applicable to this case. The decision is reversed regarding the week ending March 14, 2020. The claimant is entitled to benefits for that week pursuant to G.L. c. 151A, § 25(f), and an end date of March 15, 2020, will be put on this issue.

The claimant's eligibility for benefits as of March 15, 2020, shall be adjudicated separately under G.L. c. 151A, §§ 25(e)(1) and 25(e)(2).



Charlene A. Stawicki, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 28, 2021



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, 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 apply at: <https://ui-cares-act.mass.gov/PUA/>. The claimant may also call customer assistance at 877-626-6800 (select the number for your preferred language, then press # 2 for PUA).

**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