

**While the claimant worked part-time for the employer during the two weeks that he claimed benefits, he was eligible for partial unemployment benefits pursuant to G.L. c. 151A, §§ 29(b) and 1(r)(1), only in the week that he earned less than his weekly benefit rate plus earnings disregard.**

**Board of Review  
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**Issue ID: 0038 2377 09**

### Introduction and Procedural History of this Appeal

The employer appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to award partial unemployment benefits. 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, effective March 29, 2020, which was approved in a determination issued on May 11, 2020. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the employer, the review examiner affirmed the agency's initial determination and awarded benefits in a decision rendered on May 7, 2021. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant was in partial unemployment, and, thus, he was eligible for partial unemployment benefits pursuant to 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 employer's appeal, we remanded the case to the review examiner to obtain additional evidence about the claimant's hours of work and earnings. Only the employer 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, in any week that the claimant worked less than a full-time schedule of hours, the claimant was in partial unemployment, 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. On April 9, 2019, the claimant began working part-time for the instant employer, a music center, as a music teacher. The claimant was paid \$30.00 per hour.

2. The claimant was not hired to work any specific number of hours per week. The claimant's schedule was based on student enrollment.
3. The claimant's schedule varied week to week.
4. The claimant's hours increased or decreased depending upon enrollment.
5. Less work was available during the summer months, July and August.
6. The wages paid to the claimant during the period of April 9, 2019 through April 24, 2020, are as follows:

CHECK DATE	HOURS (\$30 PER HR)	WAGES PAID
04/12/2019	4.25	\$127.50
04/19/2019	7.25	\$345.00
04/26/2019	7.25	\$345.00
05/03/2019	14.50	\$435.00
05/10/2019	10.75	\$322.50
05/17/2019	11.25	\$337.50
05/24/2019	10.25	\$307.50
05/31/2019	9.00	\$270.00
06/07/2019	12.75	\$302.50
06/14/2019	16.50	\$495.00
06/21/2019	10.25	\$307.50
06/28/2019	11.00	\$330.00
07/05/2019	11.75	\$352.50
07/12/2019	5.50	\$165.00
07/19/2019	7.50	\$225.00
07/26/2019	10.50	\$315.00
08/02/2019	6.50	\$195.00
08/09/2019	6.00	\$180.00
08/16/2019	11.50	\$345.00
08/23/2019	4.50	\$135.00
08/30/2019	4.50	\$135.00
09/06/2019	3.75	\$112.50
09/13/2019	11.75	\$352.50
09/20/2019	12.75	\$382.50
09/27/2019	12.75	\$382.50
10/04/2019	12.75	\$382.50
10/11/2019	11.75	\$352.50
10/18/2019	12.25	\$367.50
10/25/2019	12.25	\$376.50

11/01/2019	12.25	\$367.50
11/08/2019	8.25	\$247.50
11/15/2019	10.25	\$307.50
11/22/2019	11.75	\$352.50
11/29/2019	11.75	\$352.50
12/06/2019	11.75	\$352.50
12/13/2019	11.75	\$352.50
12/20/2019	7.50	\$225.00
12/27/2019	1.00	\$ 30.00
01/03/2020	0.00	\$ 0.00
01/10/2020	11.25	\$337.50
01/17/2020	11.25	\$337.50
01/24/2020	11.75	\$352.50
01/31/2020	9.25	\$277.50
02/07/2010	0.00	\$ 0.00
02/14/2020	11.25	\$337.50
02/21/2020	8.50	\$255.00
02/28/2020	4.75	\$142.50
03/06/2020	11.25	\$337.50
03/13/2020	10.25	\$307.50
03/20/2020	1.00	\$ 30.00
03/27/2020	11.25	\$337.50
04/03/2020	8.75	\$262.50
04/10/2020	8.75	\$262.50
04/17/2020	7.75	\$232.50
04/24/2020	9.25	\$277.50

7. For the week beginning April 5, 2020 through April 11, 2020, the claimant worked and had earnings as follows:

Friday, April 9, 2020	4.00 hours	\$120.00
Saturday, April 10, 2020	4.75 hours	<u>\$152.50</u>
		\$262.60

8. For the week beginning April 5, 2020 through April 11, 2020, the claimant worked his regularly scheduled part-time hours.

9. For the week beginning April 5, 2020 through April 11, 2020, the claimant accepted all available hours.

10. For the week beginning April 12, 2020 through April 18, 2020, the claimant worked and had earnings as follows:

Friday, April 16, 2020	4.00 hours	\$120.00
Saturday, April 17, 2020	3.75 hours	<u>\$112.50</u>

\$232.50

11. For the week beginning April 12, 2020 through April 18, 2020, the claimant worked his regularly scheduled part-time hours.
12. For the week beginning April 12, 2020 through April 18, 2020, the claimant accepted all available hours.
13. The employer did not possess a WorkShare plan application document.
14. The employer possessed a WorkShare Plan #[X] Approval document which stated the following:  
  
Start Date: April 5, 2020  
End Date: September 26, 2020.
15. The employer believed his first contact date with the WorkShare program was on March 23, 2020.
16. The employer created a WorkShare plan due to the COVID-19 pandemic. The employer was shutting down and was not sure what would happen due to the pandemic.
17. Up to 19 employees were eligible to participate in the WorkShare plan.
18. The employer is unsure how many employees participated in the WorkShare plan.
19. The employer did not know if the claimant participated in the Workshare plan.
20. On April 9, 2020, the DUA sent a Notice of Approval to the employer stating the claimant was hired to work a part-time schedule of hours, is accepting all available work, and therefore, is entitled to partial benefits beginning April 12, 2020 and for any week in which the hours of scheduled work are less than full-time.

### 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 disagree with the review examiner's definition of partial unemployment, as it is incomplete.

The DUA's electronic record-keeping system, UI Online, shows that during his claim, the claimant certified for only two weeks of benefits, the week beginning April 5, 2020, and the week beginning April 12, 2020, and that he was paid benefits for both weeks. In the employer's appeal, it asserts that because the claimant was employed and paid at his normal rate, he should not be eligible for any unemployment benefits.

G.L. c. 151A, § 29 authorizes benefits be paid only to those in "total unemployment" or "partial unemployment." These terms are in turn defined by G.L. c. 151A, § 1(r), which provides, in relevant part, as follows:

(1) "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; provided, however, that certain earnings as specified in paragraph (b) of section twenty-nine shall be disregarded. . . .

(2) "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 consolidated findings show that, during the two weeks beginning April 5 and April 12, 2020, the claimant was indeed working. *See Consolidated Findings ## 7 and 10.* Since he did perform wage-earning services, he was not in "total unemployment" within the meaning of G.L. c. 151A, § 1(r)(2).

Next, we consider whether he was in partial unemployment and eligible for partial benefits pursuant to G.L. c. 151A, §§ 29(b) and 1(r)(1). It is true that, to meet the definition of "partial unemployment" above, the individual must have had less than a full-time weekly schedule of work. However, the definition further requires that the individual be capable and available for work, and that he have earned an amount less than the sum of his weekly benefit rate plus the amount of earnings which are disregarded, as specified in G.L. c. 151A, § 29(b).

Consolidated Findings ## 9 and 12 provide that the claimant accepted all available hours. From this we can reasonably infer that he was capable and available for work.

Based upon the wages earned from all employers in his base period,<sup>1</sup> the DUA calculated the claimant's weekly benefit rate to be \$192. Pursuant to G.L. c. 151A, § 29(b), earnings up to one-third of his weekly benefit rate are disregarded. Here \$64 in earnings are disregarded. This means that the claimant will be deemed to be in partial unemployment in any week in which he is paid less than \$256 ( $\$192 + \$64 = \$256$ ).

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<sup>1</sup> The base period is generally the last four completed quarters prior to filing a claim. Here, the claimant's base period included the four quarters of 2019.

Consolidated Finding # 7 provides that the employer paid the claimant \$262.60 during the week beginning April 5, 2020. Since \$262.60 is greater than the claimant's weekly benefit amount plus earnings disregard, \$256.00, the claimant was not in partial unemployment and he is ineligible to receive any benefits for this week.

Consolidated Finding # 10 provides that the employer paid the claimant \$232.50 during the week beginning April 12, 2020. Since this is less than \$256.00, he is eligible for partial unemployment benefits during this week.

We, therefore, conclude as a matter of law that the claimant was not in partial unemployment within the meaning of G.L. c. 151A, §§ 29 and 1(r), during the week beginning April 5, 2020. We further conclude that the claimant was in partial unemployment pursuant to the same sections of law during the week beginning April 12, 2020.

The review examiner's decision is affirmed in part and reversed in part. The claimant is denied benefits for the week beginning April 5, 2020. The claimant is entitled to receive partial unemployment benefits for the week beginning April 12, 2020, and for subsequent weeks, if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - September 27, 2021**



Charlene A. Stawicki, Esq.  
Member



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](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.

AB/rh