

Claimant, who worked 2½ days during the week at issue, was in partial unemployment, since he worked all hours available to him. However, the overpayment amount is reduced based upon the accurate gross wages in his pay stub.

**Board of Review
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Issue ID: 0039 0452 15

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to award only partial unemployment benefits for one week. We review, pursuant to our authority under G.L. c. 151A, § 41. We affirm the claimant's eligibility for partial unemployment benefits for the week in question but modify the amount to which he is entitled for that week, as set forth below.

The claimant was laid off from his position with the employer on January 3, 2020. He filed a claim for unemployment benefits with the DUA on January 6, 2020, which was subsequently approved. He began working at a new position for the employer on January 13, 2020, but became separated again after working a half-day on January 15, 2020.

The claimant certified and was found eligible for benefits for the week ending January 18, 2020, but was subsequently found to be overpaid \$456.00 in a determination issued by the DUA on April 21, 2020, pursuant to G.L. c. 151A, §§ 29(b) and 1(r). 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 determination and overpayment in a decision rendered on August 1, 2020. We accepted the claimant's application for review.

The determination and overpayment were affirmed after the review examiner concluded that despite the claimant's assertion that he had not received any payment for the week at issue, there were reported earnings of \$678.24 for him that week. Thus, although the claimant was in partial unemployment and entitled to partial benefits under G.L. c. 151A, §§ 29(b) and 1(r), he was subject to an overpayment after his reported wages for the week were taken into account. 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 evidence regarding the claimant's earnings for the week at issue. 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, including information available to us from the DUA's UI Online computer database.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant was in partial unemployment and entitled to some benefits during the week at issue, but

had been overpaid \$456.00 based on wages reported to the DUA, 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 1/6/20, the claimant filed an initial claim for unemployment insurance benefits.
2. The claimant's weekly benefit rate is \$668.00.
3. The claimant's weekly earnings exclusion amount is \$222.67.
4. On 1/13/20, the claimant started working a new position for the employer.
5. The claimant worked 1/13/20, 1/14/20 and a half a day on 1/15/20.
6. The claimant's schedule of work was to be full time earning \$22.00 an hour.
7. The claimant earned gross wages in the amount of \$506 during the week in question. The claimant worked 23 hours at \$22.00 an hour.
8. On 4/21/20, the Department issued a Notice of Disqualification under Sections 29(b) and 1(r)(1) of the Law for the week of 1/12/20 through 1/18/20.
9. The claimant appealed the disqualification.

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, while the review examiner's consolidated findings of fact support her initial conclusion that the claimant was in partial unemployment and entitled to some benefits for the week at issue, we modify the amount to which the claimant was entitled, in view of his actual wages for that week.

The review examiner's decision was based on G.L. c. 151A, §§ 29(a), 29(b), and 1(r). 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. . . .

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. . . .

The review examiner initially found that the claimant filed a claim for unemployment benefits on January 6, 2020. The DUA calculated the claimant’s weekly benefit rate to be \$668.00, with an earnings exclusion of \$222.67 each week.

The review examiner also found that the claimant began a new position working for the employer on January 13, 2020. He worked two and one-half days from January 13 through January 15, 2020, earning \$22.00 per hour for 23 hours of work, before becoming separated again. Those original findings also provided that there were reported wages for the claimant of \$678.24 during this week and, on this basis, concluded correctly that the claimant was entitled to partial unemployment benefits, because he worked all the part-time hours available to him and was paid gross wages that totaled less than his weekly benefit rate plus his weekly earnings disregard.

We remanded the case because, notwithstanding his insistence during the initial hearing that he had not received any wages during the week at issue, the claimant provided a paystub from the employer reporting his wages for that week. The review examiner’s consolidated findings now show that the claimant earned \$506.00 in wages during the week at issue, not \$678.24. *See Consolidated Finding # 7.*

The claimant’s weekly benefit rate plus his earnings disregard is \$890.67 (\$668.00 + \$222.67). *See Consolidated Findings ## 2–3.* The initial overpayment, based on incorrect wages of \$678.24, was determined to be \$456.00. The claimant had received his full weekly benefit rate of \$668.00, but, using the wages that were reported incorrectly ($\$890.67 - \$678.24 = \$212.43$, which is rounded down to \$212.00), he was only entitled to \$212.00.

Using the claimant’s revised, actual wages of \$506.00 for the week at issue, the claimant is entitled to \$385.00 in benefits for that week ($\$890.67 - \$506.00 = \$384.67$, rounded up to \$385.00). Since he was paid his full weekly benefit rate of \$668.00, he has been overpaid \$283.00 ($\$668.00 - \$506.00 = \283.00).

We, therefore, conclude as a matter of law that the claimant was eligible for benefits because he was in partial unemployment, working all available hours available to him pursuant to G.L. c. 151A, §§ 29(a), 29(b), and 1(r)(1) and (2).

The review examiner’s decision is affirmed regarding the outcome but modified as to the amount of the overpayment at issue. The claimant was in partial unemployment for the week ending

January 18, 2020, and was entitled to benefits that week in the amount of \$385.00. The claimant's overpayment amount is reduced from \$456.00 to \$283.00 for that week.



BOSTON, MASSACHUSETTS

DATE OF DECISION - October 23, 2020

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