

The claimant earned sufficient wages working for a grocery store during his base period to be eligible for a regular unemployment claim. Even if he had resigned from the grocery store under circumstances that would have disqualified him from receiving regular benefits at the time, such disqualification under G.L. c. 151A, § 25(e)(1), was not indefinite. Because he continued working part-time in self-employment for at least eight weeks of work and earned at least eight times his weekly benefit amount, he became eligible for a new regular unemployment claim.

**Board of Review
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Issue ID: 0039 0687 39

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA), which found him eligible for a regular unemployment claim with a benefit rate of \$139.00 per week. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

The claimant filed a claim for unemployment benefits with the DUA, effective March 22, 2020. On April 7, 2020, the DUA determined that the claimant was eligible for an unemployment claim with a weekly benefit rate of \$139.00. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by the claimant, the review examiner affirmed the agency's initial determination in a decision rendered on April 28, 2021. We accept the claimant's application for review.

Benefits were awarded after the review examiner determined that the claimant earned sufficient wages in his base period and, thus, he was eligible for benefits pursuant to G.L. c. 151A, § 24(a). Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant is eligible for regular unemployment benefits at the weekly benefit amount of \$139.00, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant filed a claim for unemployment benefits with an effective date of March 22, 2020.
2. The claimant worked as an employee for one employer during his base period, a Grocery Store.

3. The claimant was paid a total of \$4,355.67 during the first quarter of 2019.
4. The claimant was paid a total of \$2,871.76 during the second quarter of 2019.
5. The claimant was paid a total of \$2,897.36 during the third quarter of 2019.
6. The claimant was paid a total of \$1,239.46 during the fourth quarter of 2019.
7. On April 7, 2020, the claimant received a Monetary Determination. DUA determined that the claimant's weekly benefit amount is \$139.
8. The claimant appealed the Monetary Determination.

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 findings are supported by substantial and credible evidence; and (2) whether the review examiner's ultimate conclusion is free from error of law. Upon such review, the Board adopts the review examiner's findings of fact and deems them to be supported by substantial and credible evidence. As discussed more fully below, we also agree with the review examiner's legal conclusion that the claimant is eligible for regular unemployment benefits on the claim which he filed, effective March 22, 2020.

In his appeal, the claimant asserts that he is entitled to Pandemic Unemployment Assistance (PUA) rather than regular unemployment benefits, because he was working as an independent contractor at the time that he became unemployed. PUA is a new unemployment benefit program provided under § 2102 of the CARES Act of 2020 and administered by the U.S. Secretary of Labor.¹ Although self-employed individuals are covered under the PUA benefit program, they are not eligible for PUA benefits, if they are eligible for regular unemployment benefits.²

Findings of Fact ## 2–6 provide that while working for a grocery store during his base period, the claimant earned \$11,364.25. In order to be monetarily eligible for a regular unemployment claim, an individual must have been paid a sufficient amount of wages in the base period. This requirement is taken from G.L. c. 151A, § 24(a), which provides, in relevant part, that a claimant must:

[h]ave been paid wages in the base period amounting to at least thirty times the weekly benefit rate; provided, however, that for the period beginning on January first, nineteen hundred and ninety-five the individual has been paid wages of at least two thousand dollars during said base period; provided, further, that said amount shall be increased annually proportionately, rounding to the nearest one hundred dollars, to any increases which have occurred during the prior calendar year in the minimum wage as set forth in section one of chapter one hundred and fifty-one;

¹ Pub. L. 116-136 (Mar. 27, 2020), § 2102.

² See CARES Act, § 2102(a)(3)(A)(i).

and, provided further, that any such increase shall be effective beginning on the first Sunday in January.

Due to increases in the minimum wage, for claims effective in 2020, the minimum base period wage requirement was \$5,100.00.³ Here, the claimant was paid \$11,364.25 in wages during the base period. Thus, he satisfies this statutory requirement. However, he still must have been paid thirty times his weekly benefit rate.

The benefit rate amounts to fifty percent of a claimant's average weekly wage. G.L. c. 151A, § 29(a). For an individual with more than two quarters of wages, such as the claimant, the average weekly wage is an amount equal to "one twenty-sixth of the total wages reported for an individual in the two highest quarters of his base period." G.L. c. 151A, § 1(w). As found by the review examiner, the claimant's two highest quarters of wages are the first and third quarters of 2019. Adding these quarterly wages together, dividing by twenty-six (to get the average weekly wage), and then dividing again by two equals a benefit rate of \$139.00 per week. Thirty times this amount is \$4,170. The claimant earned more wages than this amount during his base period. Therefore, he is monetarily eligible for a regular unemployment claim.

The claimant argues that, because he voluntarily left his wage-earning job at the grocery store, he should be disqualified from receiving regular unemployment benefits pursuant to G.L. c. 151A, § 25(e)(1), and, therefore, eligible for PUA. G.L. c. 151A, § 25 provides, in relevant part, as follows:

No waiting period shall be allowed and no benefits shall be paid to an individual under this chapter for –

(e) For the period of unemployment next ensuing and *until the individual has had at least eight weeks of work and has earned an amount equivalent to or in excess of 8 times the individual's weekly benefit amount after the individual has left work* (1) voluntarily unless the employee establishes by substantial and credible evidence that he had good cause for leaving attributable to the employing unit or its agent

(Emphasis added.) Thus, even if the claimant voluntarily quit his grocery store job without good cause attributable to the employer, the disqualification imposed by G.L. c. 151A, § 25(e)(1), is not indefinite. Once he had at least eight weeks of work and earned at least eight times his \$139.00 weekly benefit amount, the disqualification ends.

With his appeal, the claimant includes a letter from an attorney stating that the claimant worked 15 hours a week for this attorney from 2018 through March 30, 2020, earning \$20 per hour (or \$300 per week). The claimant has also submitted a copy of his letter of resignation to the grocery store, which is dated October 14, 2019. From these documents, we can infer that, between his separation from the grocery store and claim filing date of April 4, 2020, he performed about 21 weeks of work and earned about \$6,300. These services eliminated any disqualification that might have been imposed under G.L. c. 151A, § 25(e)(1).

³ See DUA UI Policy & Performance Memorandum (UIPP) 2019.07 (Dec. 19, 2019).

We, therefore, conclude as a matter of law that the claimant is monetarily eligible for a regular unemployment claim. For this reason, we further conclude that he is not eligible for PUA benefits.

The review examiner's decision is affirmed. The claimant is entitled to receive regular unemployment benefits for the week beginning March 22, 2020, and for subsequent weeks if otherwise eligible.

N.B. If the claimant can show that he earned at least \$5,000 in net self-employment income in the most recent taxable year prior to filing his regular unemployment claim, he may be eligible for an additional \$100 per week under the Mixed Earners Unemployment Compensation (MEUC) program for certain weeks in 2021. MEUC benefits are not available to individuals receiving PUA benefits. To apply for MEUC, go to <https://ui-cares-act.mass.gov/PUA/>.

BOSTON, MASSACHUSETTS
DATE OF DECISION - June 25, 2021



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

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

**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.

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