

**Where claimant is collecting a pension to which both he & his base period employer contributed, claimant's weekly benefit rate is subject to a deduction of half of the amount of the pension the claimant receives each week.**

**Board of Review  
19 Staniford St., 4<sup>th</sup> Floor  
Boston, MA 02114  
Phone: 617-626-6400  
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.  
Chairman  
Charlene A. Stawicki, Esq.  
Member  
Michael J. Albano  
Member**

**Issue ID: 0041 3203 28**

#### Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to reduce the claimant's weekly 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 separated from his position with the employer on April 24, 2019. On May 10, 2020, he filed a new claim for unemployment benefits with the DUA, which was approved. However, in a determination issued on May 20, 2020, the DUA reduced the claimant's weekly benefit amount by the full amount of the pension he received. 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 that the claimant's weekly benefit rate was subject to a pension deduction, denying half of the amount of the claimant's weekly pension from his weekly unemployment benefit rate, in a decision rendered on September 23, 2020. We accepted the claimant's application for review.

The claimant's full weekly benefit amount was reduced after the review examiner determined that the claimant was receiving pension payments from a pension that had been partially funded by both the employer and by the claimant, and, thus, his weekly benefit amounts had to be reduced by half of the pension amount as required under G.L. c. 151A, § 29(d)(6). 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, as well as upon information available to us through the DUA's UI Online electronic database.

The issue before the Board is whether the review examiner's decision, which concluded that, due to the receipt of weekly pension payments, the claimant's weekly benefit amount must be reduced by \$391.37 [sic], 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. On 5/10/20, the claimant filed a new claim for unemployment benefits establishing a base period which began on 4/1/19 and ended on 3/31/20. The claimant performed services for the instant employer, a University, from 12/1/98 through 4/24/19.
2. The claimant was determined to be monetarily eligible for unemployment benefits at the rate of \$820 [sic] per week.
3. The claimant is receiving a retirement benefit from the employer in the amount of \$1,694.64 per month.
4. The claimant contributed to this pension fund. The employer also contributed to it.

### 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 are supported by substantial and credible evidence; and (2) whether the review examiner's ultimate conclusion is free from error of law. After such review, the Board adopts the review examiner's findings of fact except for Finding # 2, which incorrectly found the claimant's weekly benefit rate was \$820.00. From our review of the Claimant's Profile in UI Online, his weekly benefit rate is \$823.00 per week. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence.

Although we agree with the review examiner's legal conclusion that the claimant's weekly benefit amount must be offset because of his pension payment, we conclude that it must be reduced by a different, lesser amount.

G.L. c. 151A, § 29(d)(6), provides, in pertinent part, as follows:

(d) An individual in unemployment and otherwise eligible for benefits, who is receiving, has received, or will receive payments in the form of retirement benefits, any part of which was financed by a base period employer, shall be paid for each week of unemployment an amount computed as follows: . . .

(6) Notwithstanding any of the foregoing provisions of this subsection, the amount of benefits otherwise payable to an individual for any week which begins in a period with respect to which such individual is receiving governmental or other pension, retirement or retired pay, annuity or any other similar periodic payment which is based on the previous work of such individual, shall be reduced by an amount equal to the amount of such pension, retirement or retired pay, annuity or other payment, which is reasonably attributable to such week; provided, however, . . . such reduction shall apply only if a base period employer contributed to or maintained such pension, . . . and . . . services of the individual for such employer during the base period affected eligibility for or increased the amount of such pension, . . . and provided further, that if the individual contributed to such plan, the amount of benefits otherwise payable to such

individual shall be reduced by fifty per cent of the amount of such pension, . . . notwithstanding the amount contributed by the individual to such plan. Payments received under the Social Security Act shall not be subject to this paragraph.

The review examiner's findings show that the claimant began receiving pension payments from his former government employer, and that both the employer and the claimant contributed to his pension during his employment. *See* Finding # 4. Based upon this finding, the review examiner correctly concluded that G.L. c. 151A, § 29(d)(6), requires that the claimant's weekly benefit amount be reduced by 50% of the amount of his pension payment.

As noted above, Finding # 2 did not accurately recite the claimant's weekly benefit rate from the DUA; he is eligible for \$823.00 per week in unemployment benefits, not \$820.00.

The claimant is paid his retirement benefit monthly in the gross amount of \$1,694.64. *See* Finding # 3. Although subsection (6) of G.L. c. 151A, § 29(d), is silent as to how to calculate the weekly pension payment, we refer back to subsection (4), which instructs that the individual's gross monthly retirement benefit be divided by 4.3, disregarding any fractional part of a dollar. When \$1,694.00 is divided by 4.3, the result is \$393.95 and not \$391.37, as found in the review examiner's analysis.

Because the claimant contributed to his government pension plan, we must reduce his \$823.00 weekly benefit amount by half of the \$393.00 weekly pension payment. Half of \$393.00 is \$196.00.<sup>1</sup> Thus, pursuant to G.L. c. 151A, § 29(d)(6), the claimant's weekly benefit amount of \$823.00 is reduced by \$196.00, not the \$391.00 amount stated in the original hearing decision. He is entitled to a weekly benefit amount of \$627.00.

We, therefore, conclude as a matter of law that under G.L. c. 151A, § 29(d)(6), the claimant's weekly benefit amount must be reduced to offset government pension payments made during his benefit year, by 50% of the amount of his weekly pension benefit.

The portion of the review examiner's decision that concluded the claimant is subject to a pension reduction is affirmed. The portion of the review examiner's decision that reduced his weekly benefit amount by \$391.00 is reversed. The claimant's weekly benefit amount shall be reduced instead by \$196.00.

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<sup>1</sup> Again, following the instructions in G.L. c. 151A, § 29(d)(4), we disregard the fractional part of a dollar.

We note that, notwithstanding the errors in the review examiner's initial decision, the claimant's Weeks Claimed screens in UI Online already show that he has received \$626.00 in regular benefits each week, after the pension deduction had been properly deducted.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - November 16, 2020**



Paul T. Fitzgerald, Esq.  
Chairman



Charlene A. Stawicki, Esq.  
Member

Member Michael J. Albano 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](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.

JPCA/rh