

Claimant school paraprofessional, who continued to receive full salary despite working reduced hours due to COVID-19, was not in unemployment.

**Board of Review
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Issue ID: 0043 3512 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 deny unemployment benefits. 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 on June 14, 2019, which was subsequently approved. The claimant reopened this claim for benefits on May 23, 2020. On June 12, 2020, the DUA issued a determination denying benefits pursuant to G.L. c. 151A, §§ 29(a) and 1(r). The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by both parties, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on August 15, 2020. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant continued to receive his full salary from the employer, despite not physically working full-time due to the COVID-19 pandemic, and, thus, he was not in unemployment and was not entitled to benefits under G.L. c. 151A, §§ 29(a) and 1(r). 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 was not in unemployment because he continued to receive his full salary from his employer despite having his hours cut due to the COVID-19 pandemic, 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 has worked full-time as a paraprofessional for the instant employer, a school, since September, 2018. He earns \$16.01 per hour and works 32.5 hours per week.

2. The claimant initially filed a claim on 06/05/19 [sic] effective 06/09/19.
3. The claimant continued to certify for weekly benefits and failed to report any of his earnings throughout the beginning of the 2019–2020 school year even though he was working full-time.
4. When the COVID-19 pandemic began in March, 2020, the claimant was not required to physically work his full-time schedule, but he was still paid his regular pay each week until the end of the 2019–2020 school year on 06/15/20.
5. On 06/08/20, the claimant filed a claim for unemployment benefits effective 06/07/20.
6. The claimant received reasonable assurance that he would be returning to the same or similar position the following school year.
7. On 06/12/20, the Department of Unemployment Assistance issued a Notice of Disqualification determining that the claimant was working a full-time schedule and therefore he was not in unemployment and subject to disqualification beginning 05/17/20 and indefinitely until he meets the requirements of the Law.

Ruling of the Board

After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we conclude that the review examiner's decision is based on substantial evidence and is free from any error of law affecting substantive rights.

We note, however, that the review examiner found that the employer's school year ended on June 15, 2020. Thereafter, the claimant no longer received wages. Consequently, we will put an end date to the claimant's disqualification on this issue of June 15, 2020.

We further note that the claimant's employment as a school-based paraprofessional subjects him to the requirements of G.L. c. 151A, § 28A(a), with regard to the break in employment between academic years. We have asked the DUA to investigate and adjudicate the claimant's eligibility for benefits under this section of the law, from June 16, 2020, through August 23, 2020.

Finally, we note that the claimant has uploaded into UI Online a letter from the employer's superintendent, notifying him that he was laid off as of August 24, 2020. We have asked the DUA to investigate and adjudicate the claimant's eligibility for benefits under G.L. c. 151A, §§ 25(e)(1) and 25(e)(2), as of August 24, 2020.

The review examiner's decision is affirmed. The claimant is denied benefits from May 17, 2020, through June 15, 2020.



BOSTON, MASSACHUSETTS

Paul T. Fitzgerald, Esq.
Chairman

DATE OF DECISION - September 15, 2020



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.

JPCA/jv/rh