

The claimant's internship with the employer was part of a university co-op program. He was not entitled to benefits when that internship ended, because the services were exempt under G.L. c. 151A, § 6(k).

**Board of Review
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Issue ID: 0047 0138 47

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 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 December 20, 2019. He filed a claim for unemployment benefits with the DUA, effective June 21, 2020, which was approved in a determination issued on July 15, 2020. The employer 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 awarded benefits in a decision rendered on February 23, 2021. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant's separation from the employer did not stem from deliberate misconduct in wilful disregard of the employer's interest or a knowing violation of a reasonable and uniformly enforced rule or policy of the employer and, thus, he was not disqualified under G.L. c. 151A, § 25(e)(2). 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 provide notice and ask questions pertaining to whether the claimant's services were considered to be employment pursuant to G.L. c. 151A, § 6(k). Both parties 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.

The issue before the Board is whether the review examiner's original decision, which awarded benefits under G.L. c. 151A, § 25(e)(2), is supported by substantial and credible evidence and is free from error of law, where the record after remand shows that the claimant worked for the employer as an intern under [A] University's cooperative education program.

Findings of Fact

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

1. A letter from [A] University College of Engineering, dated March 15, 2021, (uploaded to UI Online Appeal Case Folder #E2), has been entered into evidence.
2. During 2019 and 2020, the claimant was enrolled as a full-time student at [A] University.
 - a. [A] University is a nonprofit or public educational institution which normally maintains a regular faculty and curriculum.
 - b. [A] University normally has a regular body of students in attendance at the place where its educational activities are carried out.
 - c. The claimant was enrolled in a credit program towards a degree. The claimant is enrolled in a bachelor's program in chemical engineering.
 - d. The claimant participated in the internship on a full-time basis.
 - e. The claimant both received \$20 per hour his work, but also receives college credit.
3. The Assistant Co-op Coordinator for [A] University's College of Engineering has stated in writing that the claimant worked for the employer from July 22, 2019 – December 20, 2019.
4. The Assistant Co-op Coordinator has also stated in writing that the working experience through [A] University's co-op program is an integral part of [A]'s academic program.
5. The claimant was enrolled in his [A] University program both prior to and after completing his internship.
6. When the internship ended, the claimant returned to attending class on a full-time basis.
7. The claimant would not have been able to work full-time and go to school full-time.
8. The claimant filed for unemployment benefits and received an effective date of June 21, 2020.

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. After such review, the Board adopts the review examiner's consolidated findings of fact

except to note that Consolidated Finding # 1 is not a finding of fact. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant is eligible for benefits.

The claimant worked for the employer from July 22, 2019 through December 20, 2019. *See* Consolidated Finding # 3. In her original decision, the review examiner viewed the end of the claimant's internship with the employer as a separation due to lack of work. Consequently, she ruled that he was not disqualified by G.L. c. 151A, § 25(e)(2), and was eligible for benefits. We remanded to consider whether the services performed for the employer during this internship were exempt from the unemployment statute's definition of employment.

In determining whether the services performed constituted employment within the meaning of the Massachusetts unemployment statute, we look to G.L. c. 151A, § 6, which provides, in relevant part, the following:

The term "employment" shall not include:

(k) Service performed in the employ of a school, college, or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university, or by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and such employment will not be covered by any program of unemployment insurance; or **service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer**, except that this subsection shall not apply to service performed in a program established for or on behalf of an employer or group of employers.

(Emphasis added.)

For the remand hearing, the employer obtained written confirmation from the claimant's university that during the period that he worked for the employer, the claimant was enrolled there as a full-time student.¹ The university confirmed that it is a non-profit educational institution which normally maintains a regular faculty and curriculum. Additionally, this university normally

¹ The employer produced two letters from the claimant's college, one dated March 15, 2021, and one dated September 20, 2021. Notwithstanding the statement in Consolidated Finding # 1 that the former was entered into evidence, the review examiner did not label the former document as a specific exhibit during the remand hearing. Nonetheless, the content of these letters were presented through undisputed testimony during the remand hearing and are captured in the consolidated findings.

maintains a regular body of students who attend at the place where its educational activities are carried out. At that time, the claimant was enrolled in a bachelor's degree credit program at the university. *See Consolidated Finding # 2.* He attended classes there on a full-time basis both before and after completing the internship. *See Consolidated Findings ## 5 and 6.* The university also confirmed that the services which the claimant performed during his July 22 through December 20, 2019, internship with the employer constituted work experience that is an integral part of the university's academic program. *See Consolidated Findings ## 3 and 4.*

In light of these findings, G.L. c. 151A, § 6(k), renders the services which the claimant performed during his internship for the employer to be exempt from the definition of employment. Thus, even though his internship technically ended when the employer stopped offering him work, and he is not disqualified under G.L. c. 151A, § 25(e)(2), the claimant is not eligible to be paid unemployment benefits based upon this work. Since the claimant had no other earnings during his base period, he is not monetarily eligible for benefits. *See G.L. c. 151A, § 24(a).*

We, therefore, conclude as a matter of law that, pursuant to G.L. c. 151A, § 6(k), the claimant's services for the employer did not constitute employment.

The review examiner's decision is affirmed in part and reversed in part. The claimant is denied benefits for the week beginning June 21, 2020, and for subsequent weeks.

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 22, 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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