

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

Issue ID: 0047 7236 87

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA), which concluded the claimant was in partial unemployment from the week beginning April 12, 2020. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On November 7, 2020, the agency initially determined that the claimant was entitled to unemployment benefits. However, the determination also informed the claimant that he had failed to accurately report the gross earnings for the week in which he worked. The claimant appealed, and only the claimant attended the hearing. In a decision rendered on April 13, 2021, the review examiner modified the agency determination, concluding that the claimant was in partial unemployment and, thus, was not disqualified under G.L. c. 151A, §§ 29 and 1(r). However, the review examiner's findings of fact changed the partial earnings for several of the weeks in the claimant's benefit year. The Board accepts the claimant's application for review.

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 do make one final comment on this case. While reviewing the claimant's earnings from the decision, the Board notes that they have been incorrectly entered into the DUA's UI Online electronic record-keeping system. This may be causing a larger overpayment than is appropriate in this case, based on the review examiner's decision. To ensure that the proper earnings are in the UI Online system, and to guarantee that the amount of the overpayment is correct, the Board will forward this decision to the agency for further implementation. The agency should make sure that the following weekly earnings are noted in the UI Online system:

For the week ending April 18, 2020: \$228.60
For the week ending April 25, 2020: \$229.86
For the week ending May 2, 2020: \$246.06
For the week ending May 9, 2020: \$487.80¹

¹ While Finding of Fact # 9 indicates that the claimant's gross salary for the week ending May 9, 2020 was \$0.00, we believe that this was a typographical error. In her decision, the review examiner concludes that the claimant's gross income for the week ending May 9, 2020 was \$487.80. This figure is consistent with the uncontested evidence of record and, therefore, is the figure used in this decision.

For the week ending May 16, 2020: \$219.06
For the week ending May 23, 2020: \$437.76
For the week ending May 30, 2020: \$329.04²
For the week ending June 6, 2020: \$374.04
For the week ending June 13, 2020: \$235.24
For the week ending June 20, 2020: \$282.24
For the week ending June 27, 2020: \$352.44

The review examiner's decision is affirmed. Pursuant to G.L. c. 151A, §§ 29(b) and 1(r)(1), the claimant is eligible to receive benefits in any week in which he earns less than his weekly benefit rate, after taking into account the earnings disregard. This decision will be forwarded to the agency for further action.

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 21, 2021



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 apply at: <https://ui-cares-act.mass.gov/PUA/>. The claimant may also call customer assistance at 877-626-6800 (select the number for your preferred language, then press # 2 for PUA).

**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

² We believe the portion of Finding of Fact # 9 pertaining to the claimant's gross earnings during this week also contains a typographical error. Both the uncontested evidence of record and the review examiner's conclusions show the claimant's gross salary for the week ending May 30, 2020 was \$329.04.

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.

LSW/rh