

**Board of Review
19 Staniford St., 4th 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: 0051 7878 21

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 we affirm in part and reverse in part.

The claimant filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on October 15, 2020. 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 in part, and reversed in part the agency's initial determination, finding that the claimant was eligible for benefits during the weeks of December 29, 2019, April 26, 2020, and May 3, 2020, but ineligible during the period between April 12, 2020, and April 25, 2020, in a decision rendered on February 9, 2022. We accepted the claimant's application for review.

Benefits were denied for a portion of the period on appeal after the review examiner determined that the claimant was not in unemployment between April 12, 2020, and April 25, 2020, and, thus, was disqualified under G.L. c. 151A, §§ 29 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 between April 12, 2020, and April 25, 2020, because she earned in excess of her weekly benefit amount plus earnings disregard during both applicable weeks, 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 an initial claim for unemployment insurance benefits, effective 12/29/19.
2. Prior to filing the claim, the claimant worked part-time as an adjunct faculty member for the employer, a community college.
3. During the fall 2019 semester, the claimant performed services for the employer. The fall semester ended on 12/17/19. The claimant did not perform any services for the employer during the period of 12/18/19 and 1/22/20. The

claimant began working for the employer on 1/23/20, when the spring 2020 semester began.

4. During the spring 2020 semester, the claimant was contracted to work a part-time schedule of hours. During the weeks beginning 4/12/20 and 4/19/20, the claimant earned gross wages of \$402.88. The claimant was also paid stipends of \$40 and \$75 to participate in workshops for the purpose of preparing and modifying course material from a face-to-face to online format. The claimant's gross pay for the biweekly period of 4/12/20 through 4/25/20 was \$920.75.
5. When certifying her eligibility for benefits for the week beginning 4/12/20 through 4/18/20, the claimant reported her weekly wages of \$402.88 plus \$40 from the stipends.
6. When certifying her eligibility for benefits for the week beginning 4/19/20 through 4/25/20, the claimant reported her weekly wages of \$402.88 plus \$40 from the stipend. The claimant reported the remaining portion of the stipend (\$35) when certifying her eligibility for benefits for the week beginning 4/26/20 through 5/2/20.
7. The claimant certified her eligibility for benefits for the week beginning 5/3/20 through 5/9/20. The claimant reported her weekly wages of \$402.88.
8. On 10/15/20, the DUA issued the claimant a Notice of Disqualification, finding her eligible for partial benefits for the weeks of 4/12/20 through 4/18/20; 4/26/20 through 5/2/20; and 5/3/20 through 5/9/20. The claimant was determined to have been overpaid benefits for the weeks ending 4/11/20 and 4/25/20.
9. On 10/23/20, the claimant appealed the Notice of Disqualification.

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 original 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. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant was not in unemployment during the period between April 12, 2020, and April 25, 2020.

To be eligible for unemployment benefits, the claimant must show that she is in a state of unemployment within the meaning of the statute. G.L. c. 151A, § 29, authorizes benefits to be paid to those in total or partial unemployment. Those terms are defined by G.L. c. 151A, § 1(r), which provides, in relevant part, as follows:

(1) "Partial unemployment", an individual shall be deemed to be in partial unemployment if in any week of less than full-time weekly schedule of work he has earned or has received aggregate remuneration in an amount which is less than the weekly benefit rate to which he would be entitled if totally unemployed during said week; provided, however, that certain earnings as specified in paragraph (b) of section twenty-nine shall be disregarded. . . .

(2) "Total unemployment", an individual shall be deemed to be in total unemployment in any week in which he performs no wage-earning services whatever, and for which he receives no remuneration, and in which, though capable and available for work, he is unable to obtain any suitable work. . . .

"Remuneration" is defined at G.L. c. 151A, § 1(r)(3), which states as follows:

For the purpose of this subsection, "Remuneration", any consideration, whether paid directly or indirectly, including salaries, commissions and bonuses, and reasonable cash value of board, rent, housing, lodging, payment in kind and all payments in any medium other than cash, received by an individual (1) from his employing unit for services rendered to such employing unit, (2) as net earnings from self-employment, and (3) as termination, severance or dismissal pay, or as payment in lieu of dismissal notice, whether or not notice is required, or as payment for vacation allowance during a period of regular employment . . .

Remuneration shall be deemed to have been received in such week or weeks in which it was earned or for such week or weeks, including any fractions thereof, to which it can reasonably be considered to apply. If the length of the period to which the remuneration applies is not clearly identified, such period shall be determined by dividing such remuneration by the amount of the individual's average weekly wage.

As an initial matter, because the claimant did not perform any wage-earning services for the employer during the week of December 29, 2019, we concur with the review examiner's conclusion that the claimant was in total unemployment during this week.

We further agree with the review examiner's conclusion that the two stipends received by the claimant do constitute remuneration within the meaning of the law. The claimant received these payments as compensation for additional work performed in workshops designed to help her adapt her syllabus and class material to a remote learning format. Finding of Fact # 4. Such work became a part of her regular duties as an adjunct faculty member when the employer transitioned to remote learning, and, therefore, any consideration received to compensate the claimant for this work constitutes remuneration. *See* G.L. c. 151A, § 1(r)(3).

As these payments do constitute remuneration, they are earnings that may impact the claimant's eligibility for benefits. In this case, the review examiner attributed the total sum of the two stipends to the two weeks between April 12, 2020, and April 25, 2020, because that was the pay period in which the employer disbursed this remuneration to the claimant. In so doing, we believe the review examiner misapplied the law.

Pursuant to the definition of remuneration articulated in G.L. c. 151A, § 1(r)(3), the DUA must apply any remuneration received by the claimant to the week or weeks in which it is earned. For example, the DUA will attribute an award of back pay to the weeks in which the claimant actually performed the wage-earning services for which he received that award, even if the money was disbursed at a much later date. See Meyers v. Dir. Of Division of Employment Security, 341 Mass. 79, 82 (1960). Accordingly, the remuneration the claimant received in this case should be attributed to the weeks in which the claimant performed the applicable wage-earning services.

At the hearing, the claimant explained that she received these two stipends for ongoing workshops and professional development activities she completed during the three-week period between April 12, 2020, and May 2, 2020.¹ We, therefore, conclude that the \$115 she earned while performing services related to these ongoing workshops should be applied to that three-week period. However, as the claimant was unable to enumerate the exact breakdown of the hours that she worked in each of those three weeks, we believe that that the \$115 from these stipends would reasonably be considered to apply equally across each of the three weeks.

A review of the claimant's UI Online profile shows that her weekly benefit amount was established at \$340, with a corresponding earnings disregard of \$113.33. Therefore, the claimant was in partial unemployment during any week in which she earned less than \$453.33.

During the week of April 12, 2020, the claimant earned her normal weekly wages of \$402.80. Finding of Fact # 5. As she also performed services related to these ongoing workshops, an additional \$38.33 (\$115 divided by 3) shall be attributed to her earnings for this week. Therefore, the claimant was in partial unemployment during the week of April 12, 2020, because her gross wages totaled \$441.13 (\$402.80 plus \$38.33), an amount less than her weekly benefit amount plus earnings disregard.

During the week of April 19, 2020, the claimant earned her normal weekly wages of \$402.80. Finding of Fact # 6. Because she also performed services relating to these ongoing workshops during this week, her total gross income for the week of April 19, 2020, was \$441.13. She was, therefore, in partial unemployment during the week of April 19, 2020, because her gross wages were less than her weekly benefit amount plus earnings disregard.

On appeal, the claimant raised concern about the overpayments generated for the weeks of April 26, 2020, and May 2, 2020. The claimant's paystub for this two-week period, which was admitted into evidence as Exhibit 5, shows that she earned the same wages of \$402.80 during each of the two applicable weeks.² As she performed services relating to the ongoing workshops during the week of April 26, 2020, her gross income during this week was \$441.13. While she did not perform services related to these workshops in the week beginning May 3, 2020, the record shows that she still earned gross wages totaling \$402.80 during that week. Because the claimant earned less than her weekly benefit amount plus earnings disregard both weeks, she was in partial unemployment during the period between April 26, 2020, and May 9, 2020. However, a review

¹ We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. See Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

² Exhibit 5 is also part of the unchallenged evidence before the review examiner.

of the claimant's UI Online profile shows that she only reported gross wages of \$42.88 to the DUA in each week. Accordingly, the record confirms that the claimant was overpaid during this two-week period.

We, therefore, conclude as a matter of law that the claimant was in total unemployment within the meaning of G.L. c. 151A, §§ 29 and 1(r), during the week of December 29, 2019. We further conclude that the claimant was in partial unemployment within the meaning of G.L. c. 151A, §§ 29 and 1(r), during period between April 12, 2020, and May 9, 2020.

The review examiner's decision is affirmed in part and reversed in part. The claimant is entitled to receive benefits for the week of December 29, 2019, and for the period between April 12, 2020, through May 9, 2020, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 6, 2022



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, 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.

LSW/rh

The claimant, an adjunct faculty member, received stipends for work performed transitioning her classes to remote learning. Such constitutes remuneration and should be applied to the three weeks in which the claimant actually performed the work for these workshops. As the claimant's gross wages in each of these three weeks did not exceed her

weekly benefit amount plus earnings disregard, she was in partial unemployment and therefore entitled to partial benefits.