

While the claimant was re-hired during the week of March 2, 2020, he did not perform any wage-earning services and did not receive any remuneration during that week. He was in total unemployment within the meaning of G.L. c. 151A, §§ 29 and 1(r), and eligible for benefits.

**Board of Review
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Issue ID: 0057 3279 13

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 reverse.

The claimant filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on November 4, 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 the agency's initial determination and denied benefits in a decision rendered on January 22, 2022. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not in unemployment during the week of March 1, 2020, and, thus, was disqualified under G.L. c. 151A, §§ 29(a) and 1(r). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we remanded the case to the review examiner to obtain additional evidence about the claimant's earnings in the beginning of March 2020. Only the claimant 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 decision, which concluded that the claimant was not in unemployment during the week on appeal because he earned gross wages in excess of his weekly benefit amount, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant filed his claim for unemployment benefits on 1/13/20.
2. The claimant certified for benefits for the week ending 3/7/20.
3. The claimant became reemployed with his most recent employer on 3/2/20.

4. The claimant did not work during the week ending 3/7/20. He had no earned income for this week.
5. The claimant certified for benefits during this week because he had no work. There was no fraud or fault on the part of the claimant in certifying for this week.
6. The claimant was paid and received unemployment benefits for this week.
7. On 11/4/20, DUA issued the claimant a determination denying him benefits. The claimant was found to be overpaid in accordance with Section 71 of the Law. This overpayment was attributed to the fault of the claimant.
8. On 11/4/20, the claimant was issued a Notice of Fault Finding for the same week. The claimant appealed this 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 consolidated 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 consolidated 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 week of March 1, 2020.

To be eligible for unemployment benefits, the claimant must show that he 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. . . .
- (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. . . .

The review examiner initially denied the claimant benefits for the week of March 1, 2020, because she found that he had earned gross wages in excess of his weekly benefit amount during that week. While the claimant became re-employed with his most recent employer on March 2, 2020, he did not perform any wage-earning services for that employer until the start of the subsequent week.

Consolidated Findings ## 3–5. As such, and in the absence of any indication from the record that the claimant was not capable of or available for work during this week, he was in total unemployment and the review examiner erred in denying the claimant benefits.

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 March 1, 2020.

The review examiner’s decision is reversed. The claimant is entitled to receive benefits for the week of March 1, 2020, through March 7, 2020.

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 6, 2022



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

Chairman Paul T. Fitzgerald 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