

Where the claimant elected to be paid wages from his academic year position throughout the 12-month calendar year, G.L. c. 151A, § 1(r)(3), requires DUA to attribute these wages to the weeks in which they were earned. Accordingly, the review examiner erred in denying the claimant benefits during the summer of 2020 based on these wages. Properly attributing these wages only to the weeks in which they were earned shows that the claimant earned less than his weekly benefit amount and was, therefore, entitled to benefits.

**Board of Review
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Issue ID: 0059 4161 70

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 January 6, 2021. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner affirmed in part, and overturned in part the agency's initial determination, denying benefits for the period June 21, 2020, through August 15, 2020, and awarding benefits for the period August 16, 2020, through December 19, 2020. We accepted the claimant's application for review.

Benefits were awarded in part and denied in part after the review examiner determined that the claimant was not in unemployment during the period between June 21, 2020, and August 14, 2020, but was in unemployment from August 16, 2020, through December 19, 2020, and, thus, was eligible for benefits only during the latter period pursuant to G.L. c. 151A, §§ 29 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 employment status during the entire period on appeal. Both parties attended the remand hearing. Thereafter, the review examiner issued his 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 claimant was not eligible for benefits during the period between June 21, 2020, and August 14, 2020, because he earned in excess of his weekly benefit amount plus earnings disregard during these weeks, but was eligible between August 16, 2020, through December 19, 2020, because he did not earn 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 worked for the instant employer, a regional school system, initially as a Co-op Coordinator, beginning September 1, 1986. The claimant was paid \$45.00 per hour.
2. The 2019–2020 academic year began on September 3, 2019.
3. The 2019–2020 academic year ended on June 16, 2020.
4. The claimant worked as a full-time Workforce Development Teacher during the 2019–2020 academic year which began on September 3, 2019, and ended on June 16, 2020.
5. On June 16, 2020, the claimant separated from his position as a Workplace Development Teacher with the instant employer.
6. Wages were disbursed to the claimant after the end of the 2019–2020 academic year for his services performed as a Workplace Development Teacher during the 2019–2020 academic year.
7. The last pay period in which the claimant received wages for his work as a Workplace Development Teacher was the period beginning August 2, 2020, and ending on August 15, 2020.
8. On July 1, 2020, the claimant was re-hired, on-call, as a Co-op Coordinator.
9. The instant employer called the claimant to work as needed.
10. For the period of June 21, 2020, through December 19, 2020, the claimant accepted all work offered by the instant employer.
11. For the period of June 21, 2020, through December 19, 2020, the claimant was capable of and available for full-time work.
12. During the period of June 21, 2020, through December 19, 2020, the claimant would have accepted full-time work had it been offered by either the instant employer or other employer.
13. On June 29, 2020, the claimant filed his claim for unemployment benefits with the Department of Unemployment Assistance (DUA) with an effective begin date of June 21, 2020 and an effective end date of June 19, 2021.
14. The claimant's weekly benefit amount was established at \$491.00.

15. The claimant's earnings disregard was established at \$163.67 per week (\$491.00 ÷ 3).
16. The claimant's weekly benefit rate plus earnings disregard totaled \$654.67 (\$491.00 + \$163.67).
17. The claimant worked and had gross earnings from the instant employer for the following weeks:

| | |
|---|------------|
| June 21, 2020 – June 27, 2020 | \$ 966.58 |
| June 28, 2020 – July 04, 2020 | \$ 948.89 |
| July 05, 2020 – July 11, 2020 | \$ 909.17 |
| July 12, 2020 – July 18, 2020 | \$ 909.17 |
| July 19, 2020 – July 25, 2020 | \$1,072.30 |
| July 26, 2020 – August 01, 2020 | \$1,072.30 |
| August 02, 2020 – August 08, 2020 | \$ 909.17 |
| August 09, 2020 – August 15, 2020 | \$ 909.17 |
| August 16, 2020 – August 22, 2020 | \$ 146.25 |
| August 23, 2020 – August 29, 2020 | \$ 146.25 |
| August 30, 2020 – September 05, 2020 | \$ 225.00 |
| September 06, 2020 – September 12, 2020 | \$ 225.00 |
| September 13, 2020 – September 19, 2020 | \$ 427.50 |
| September 20, 2020 – September 26, 2020 | \$ 427.50 |
| September 27, 2020 – October 03, 2020 | \$ 450.00 |
| October 04, 2020 – October 10, 2020 | \$ 450.00 |
| October 11, 2020 – October 17, 2020 | \$ 202.50 |
| October 18, 2020 – October 24, 2020 | \$ 0.00 |
| October 25, 2020 – October 31, 2020 | \$ 202.50 |
| November 01, 2020 – November 07, 2020 | \$ 225.00 |
| November 08, 2020 – November 14, 2020 | \$ 225.00 |
| November 15, 2020 – November 21, 2020 | \$ 135.00 |
| November 22, 2020 – November 28, 2020 | \$ 0.00 |
| November 29, 2020 – December 05, 2020 | \$ 135.00 |
| December 06, 2020 – December 12, 2020 | \$ 157.50 |
| December 13, 2020 – December 19, 2020 | \$ 157.00 |

18. For the following weeks the claimant's gross earnings exceeded his weekly benefit rate plus earnings disregard of \$654.67:

| | |
|-----------------------------------|------------|
| June 21, 2020 – June 27, 2020 | \$ 966.58 |
| June 28, 2020 – July 04, 2020 | \$ 948.89 |
| July 05, 2020 – July 11, 2020 | \$ 909.17 |
| July 12, 2020 – July 18, 2020 | \$ 909.17 |
| July 19, 2020 – July 25, 2020 | \$1,072.30 |
| July 26, 2020 – August 01, 2020 | \$1,072.30 |
| August 02, 2020 – August 08, 2020 | \$ 909.17 |
| August 09, 2020 – August 15, 2020 | \$ 909.17 |

19. For the following weeks the claimant's gross earnings did not exceed his weekly benefit rate plus earnings disregard of \$654.67:

| | |
|---|----------|
| August 16, 2020 – August 22, 2020 | \$146.25 |
| August 23, 2020 – August 29, 2020 | \$146.25 |
| August 30, 2020 – September 05, 2020 | \$225.00 |
| September 06, 2020 – September 12, 2020 | \$225.00 |
| September 13, 2020 – September 19, 2020 | \$427.50 |
| September 20, 2020 – September 26, 2020 | \$427.50 |
| September 27, 2020 – October 03, 2020 | \$450.00 |
| October 04, 2020 – October 10, 2020 | \$450.00 |
| October 11, 2020 – October 17, 2020 | \$202.50 |
| October 18, 2020 – October 24, 2020 | \$ 0.00 |
| October 25, 2020 – October 31, 2020 | \$202.50 |
| November 01, 2020 – November 07, 2020 | \$225.00 |
| November 08, 2020 – November 14, 2020 | \$225.00 |
| November 15, 2020 – November 21, 2020 | \$135.00 |
| November 22, 2020 – November 28, 2020 | \$ 0.00 |
| November 29, 2020 – December 05, 2020 | \$135.00 |
| December 06, 2020 – December 12, 2020 | \$157.50 |
| December 13, 2020 – December 19, 2020 | \$157.00 |

20. The claimant claimed unemployment insurance benefits and was paid unemployment insurance benefits for the following weeks:

June 21, 2020 – June 27, 2020
June 28, 2020 – July 04, 2020
July 05, 2020 – July 11, 2020
July 12, 2020 – July 18, 2020
July 19, 2020 – July 25, 2020
July 26, 2020 – August 01, 2020
August 02, 2020 – August 08, 2020
August 09, 2020 – August 15, 2020
August 16, 2020 – August 22, 2020
August 23, 2020 – August 29, 2020
August 30, 2020 – September 05, 2020
September 06, 2020 – September 12, 2020
September 13, 2020 – September 19, 2020
September 20, 2020 – September 26, 2020
September 27, 2020 – October 03, 2020
October 04, 2020 – October 10, 2020
October 11, 2020 – October 17, 2020
October 18, 2020 – October 24, 2020
October 25, 2020 – October 31, 2020
November 01, 2020 – November 07, 2020
November 08, 2020 – November 14, 2020

November 15, 2020 – November 21, 2020
November 22, 2020 – November 28, 2020
November 29, 2020 – December 05, 2020
December 06, 2020 – December 12, 2020
December 13, 2020 – December 19, 2020

21. On January 6, 2021, pursuant to Section 29(a), 29(b) & 1(r)(1) & 1(r) 2 of the Law, the DUA sent the claimant a Notice of Disqualification determining the claimant failed to accurately report his gross earnings for the week in which he worked; he was entitled to partial benefits for any week in which his employment was less than a full-time schedule of hours and his gross earnings were less than his allowable amount which was \$491.00 + \$163.67; therefore, he was entitled to partial benefits for the following weeks: 8/16/20 to 12/19/2020.

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 as follows. We reject the portion of Consolidated Finding # 17 that identifies the wages paid to the claimant as wages earned, as a misapplication of the legal distinction between the terms "paid" and "earned." We further reject Consolidated Finding # 18 as inconsistent with the evidence of record. 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 was only eligible for benefits during a portion of the period on appeal.

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; 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.

The review examiner concluded that the claimant was ineligible for benefits during the period between June 21, 2020, and August 14, 2020, on the grounds that his gross earnings during each of those weeks exceeded his weekly benefit amount plus earnings disregard. *See Consolidated Findings ## 16 and 17.* We believe this is a misapplication of the law.

Pursuant to the definition of remuneration articulated in G.L. c. 151A, § 1(r)(3), the DUA must apply any wages received by the claimant to the week or weeks in which it was earned, even if the employer disburses those wages to the claimant at a later date. 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 weeks after the employee actually performed those services. *See Meyers v. Dir. Of Division of Employment Security*, 341 Mass. 79, 82 (1960). The same principle applies to the claimant's wages from his full-time position as a Workplace Development Teacher.

The last date the claimant performed wage-earning services under his teaching contract for the 2019–20 academic year was June 16, 2020. Consolidated Finding # 9. While the employer did continue to pay the claimant for his work as a Workplace Development Teacher through August 22, 2020, he was not *earning* these wages after June 16, 2020, because he was no longer performing services in that capacity. Because G.L. c. 151A, § 1(r)(3), specifies that the DUA must attribute wages only to the weeks in which they were earned, the review examiner erred in denying the claimant benefits between June 21, 2020, and August 22, 2020, on the grounds that he continued to receive pay for his academic-year work. The only wages that may be attributed to the period between June 21, 2020, and August 22, 2020, are those wages earned for services performed during those weeks.

The claimant's payroll history, which was admitted into evidence as part of Remand Exhibit 1, shows that the claimant was paid \$1,818.35 bi-weekly, or \$909.18 per week, for his services as a

Workforce Development Teacher.¹ Once these earnings are properly attributed only to the weeks in which the claimant was performing wage-earning services as a Workforce Development Teacher, the information contained in Remand Exhibit 1 confirms that the claimant did not earn wages in excess of his weekly benefit amount during any week in the period between June 21, 2020, and December 19, 2020.

We, therefore, conclude as a matter of law that the claimant was in unemployment within the meaning of G.L. c. 151A, §§ 29 and 1(r), beginning June 21, 2020.

The review examiner's decision is affirmed in part and reversed in part. The claimant is entitled to receive benefits for the period between June 21, 2020, and December 19, 2020, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - June 28, 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

¹ Remand Exhibit 1, while not explicitly incorporated into the review examiner's findings, is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. 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).