The claimant filed a claim for benefits after she lost hours at her second job due to the COVID-19 shutdown, but she was still working full-time for the instant employer's public school system during the weeks encompassed by the 2019-20 and 2020-21 academic years. Because the claimant's gross weekly earnings from her part-time work for the employer's summer school and her work with her second employer during the summer of 2020 exceeded her weekly benefit amount plus earnings disregard, she was not in unemployment under G.L. c. 151A, § 1(r)(1), and she was not eligible for benefits.

Board of Review
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Issue ID: 0059 8763 05

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 affirm.

The claimant filed a claim for unemployment benefits with the DUA, effective April 5, 2020, which was denied in a determination issued on January 23, 2021. 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 October 16, 2021. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not in total or partial unemployment and, thus, was disqualified under 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 earnings during her benefit year. 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 beginning April 5, 2020, because she was working full-time for the instant employer, 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 and credibility assessment are set forth below in their entirety:

1. The claimant opened a claim for benefits with an effective date of April 5, 2020.

2. For her 2020-[01] claim, including her wages from the instant school employer, the claimant's weekly benefit rate was $349.00 and the earnings exclusion was $116.33.

3. For her 2020-[01] claim, excluding her wages from the instant school employer, the claimant's weekly benefit rate was $113.00 and the earnings exclusion was $37.67.

4. The claimant became employed by the instant employer as an instructional aide at one of its schools on August 28, 2015.

5. The claimant is still employed with the instant employer.

6. June 13, 2020, was the last date the claimant worked for the instant employer in the 2019-2020 school year.

7. The claimant was aware that she would return to work in the same capacity for the 2020-2021 school year.

8. The claimant is a Union member as part of her employment with the instant employer.

9. The claimant applied to work to work [sic] in the instant employer's 2020 summer program.

10. The claimant worked part-time as a paraprofessional for the instant employer during the summer of 2020 from July 7, 2020, through July 23, 2020.

11. The claimant's summer work schedule was 9:00 a.m. to 12:00 p.m., Tuesday, Wednesday and Thursday. The claimant's hourly rate was $15.00. The claimant's gross earnings for each week that she worked was $135.00.

12. The claimant worked all available hours the instant employer had for her during summer 2020.

13. The claimant resumed work for the instant employer for the 2020–2021 school year on September 8, 2020.

14. On March 12, 2020, the claimant's non-school employer closed down due to the COVID-19 public health emergency.

15. As of February 2020, prior to the non-school employer's shutdown due to COVID-19, the claimant worked three days, 12-15 hours per week for the employer.

16. The claimant opened a claim for benefits due to her part-time employer closing as a result of COVID-19.

17. The claimant received furlough pay from the part-time employer. It is unknown for how long the claimant received furlough pay.

18. For the week ending March 14, 2020, the part-time employer paid $69.11 in gross earnings to the claimant.

19. For the week ending March 21, 2020, it is unknown whether the claimant received furlough pay.

20. For the week ending March 28, 2020, the part-time employer paid $172.62 in gross furlough pay to the claimant.

21. For the week ending April 4, 2020, the part-time employer paid $172.62 in gross furlough pay to the claimant.

22. For the week ending April 11, 2020, the part-time employer paid $172.62 in gross furlough pay to the claimant.

23. For the week ending April 11, 2020, the part-time employer paid $172.62 in gross furlough pay to the claimant.

24. It is unknown whether the claimant received furlough pay from the week ending April 18, 2020, through June 6, 2020.

25. On June 11, 2020, the claimant's non-school employer reopened for business.

26. On or about June 11, 2020, the claimant returned to work for her non-school employer. The claimant worked about 3 days per week for this employer. The claimant worked about 4 hours per shift. The claimant's hourly rate was $13.34.

27. From June 1, 2020, through October 3, 2020, the claimant worked all available [hours] from her non-school employer.

28. The claimant's gross earnings from her part-time employer for the week ending June 13, 2020, are $232.80.

29. The claimant's gross earnings from her part-time employer for the week ending June 20, 2020, are unknown.

30. The claimant's gross earnings from her part-time employer for the week ending June 27, 2020, are unknown.

31. The claimant's gross earnings from her part-time employer for the week ending July 4, 2020, are unknown.

32. The claimant's gross earnings from her part-time employer for the week ending July 11, 2020, are $271.21.

33. The claimant's gross earnings from her part-time employer for the week ending July 18, 2020, are $133.95.

34. The claimant's gross earnings from her part-time employer for the week ending July 25, 2020, are $269.38.

35. The claimant's gross earnings from her part-time employer for the week ending August 1, 2020, are $208.93.

36. The claimant's gross earnings from her part-time employer for the week ending August 8, 2020, are $279.92.

37. The claimant's gross earnings from her part-time employer for the week ending August 15, 2020, are $267.49.

38. The claimant's gross earnings from her part-time employer for the week ending August 22, 2020, are $319.80.

39. The claimant's gross earnings from her part-time employer for the week ending August 29, 2020, are $287.24.

40. The claimant's gross earnings from her part-time employer for the week ending September 5, 2020, are $212.39.

41. The claimant's gross earnings from her part-time employer for the week ending September 12, 2020, are $252.63.

42. The claimant's gross earnings from her part-time employer for the week ending September 19, 2020, are $201.95.

43. The claimant's gross earnings from her part-time employer for the week ending September 26, 2020, are $275.57.

44. The claimant's gross earnings from her part-time employer for the week ending October 3, 2020, are unknown.

45. The claimant is still employed with her part-time employer.

Credibility Assessment:

The employer did not attend the hearing nor did the employer provide any of the documents requested in the order for additional evidence. The claimant attended the hearing and submitted the documents in her possession as requested in the

remand order. The claimant provided candid and detailed testimony regarding her employment with the instant employer and her part-time employer. It is concluded that the claimant's direct testimony is credible.

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 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. We further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented. As discussed more fully below, while we agree with the review examiner's legal conclusion that the claimant was not entitled to benefits, we reach this conclusion on separate grounds.

G.L. c. 151A, § 29, authorizes benefits be paid only to those in "total unemployment" or "partial unemployment." These terms are, in turn, 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.

An analysis of a claimant's unemployment status under G.L. c. 151A, §§ 29 and 1(r), is not employer specific. In other words, when a claimant works for multiple employers during her benefit year, her unemployment status in any given week is based on an assessment of her work and earnings from *all* of her employers during that week.

The claimant filed her 2020-01 claim for benefits after her second employer temporarily ceased operations due to the onset of the COVID-19 public health emergency. Consolidated Finding # 14. However, the claimant continued to work her full-time position for the instant employer through the end of the 2019-20 academic year on June 13, 2020. Consolidated Finding # 6. As the claimant was working full-time weekly schedule between April 5, 2020, the effective date of her claim, and June 13, 2020, she was not in total or partial unemployment within the meaning of G.L. c. 151A, § 1(r), during that period, regardless of whether she was performing wage-earning services for her second employer.

Following the end of the 2019–20 academic year on June 13, 2020, the instant employer no longer had full-time work available for the claimant. Consolidated Findings ## 6, and 9–12. As the claimant returned to work for her second employer on or around June 11, 2020, and was no longer

working full time for the instant employer beginning June 14, 2020, she was in partial unemployment under G.L. c. 151A, § 1(r)(1), beginning the week of June 14, 2020, during any week in which she worked less than a full-time schedule and earned less than her weekly benefit amount. *See* Consolidated Findings ## 6 and 26.

A claimant's weekly benefit amount is generally calculated based on all wages paid to her during her base period. *See* G.L. c. 151A, § 24(a). In this case, the DUA initially determined the claimant was entitled to a weekly benefit amount of $349.00 and an earnings disregard of $116.33. Consolidated Finding # 2. Consistent with this determination, the claimant was in partial unemployment beginning June 14, 2020, during any week in which she worked less than a full-time schedule and earned less than $465.33 ($349 plus $116.33), with the exception of the period between July 5, 2020, and September 12, 2020, as explained below.

While the claimant produced extensive documentary evidence of her earnings from both of her employers, she could not provide specific details of her gross earnings from her second employer during the period between June 14, 2020, and July 4, 2020. Consolidated Findings ## 29–31. Absent evidence that her gross earnings from her second employer totaled less than $465.33 during each of those three weeks, we cannot conclude that she was in partial unemployment under G.L. c. 151A, § 1(r)(1), between June 14, 2020, and July 4, 2020. Thereafter, however, the nature of the claimant's work with the instant employer again alters our analysis of her unemployment status.

As the claimant was a full-time employee of an educational employer, the DUA was required to assess whether the instant employer had provided her with reasonable assurance of re-employment for the subsequent academic year. G.L. c. 151A, § 28A. If the DUA determines a claimant was provided with reasonable assurance of re-employment for the subsequent academic year, her base period wages from that educational employer may not be used in calculating her weekly benefit amount. *Id.*

In a separate determination, the DUA concluded that the claimant had been provided with reasonable assurance of re-employment for the subsequent academic year during the period between July 5, 2020, and September 12, 2020.[1] In other words, the DUA determined that claimant's base period wages from the instant employer may not be used in calculating her weekly benefit amount during the period she was found to have reasonable assurance of re-employment. However, this does not preclude her from receiving benefits entirely. Using only the claimant's base period wages from her second employer, the DUA determined the claimant was entitled to a weekly benefit amount to be $113.00, and an earnings disregard of $37.67. Consolidated Finding # 3. Therefore, for the period between July 5, 2020, and September 12, 2020, the claimant was in partial unemployment during any week in which she worked less than a full-time schedule and earned less than $150.67 ($113 plus $37.67).

Beginning the week of July 5, 2020, and through the week ending July 25, 2020, the claimant worked part-time for the instant employer's summer school in addition to her part-time work with her second employer. Consolidated Findings ## 10 and 26. The claimant's gross earnings from

[1] The DUA found the employer had provided the claimant with reasonable assurance of re-employment for the subsequent academic year in a separate determination in Issue ID # 0059 8763 42, which was issued on January 23, 2021. As neither party has appealed that determination, the DUA's decision has become final.

her summer school work totaled $135.00 per week. Consolidated Finding # 11. During the same period, the claimant's gross earnings from her second employer fluctuated between $133.95 and $269.38 per week. Consolidated Findings ## 32–34. Accordingly, the consolidated findings confirm the claimant earned gross weekly wages of at least $268.95 in each week between July 5, 2020, and July 25, 2020. Because her earnings exceeded $150.67, she was not in partial unemployment pursuant to G.L. c. 151A, § 1(r)(1), during that three-week period.

The claimant did not perform any work for the instant employer during the six-week period between July 26, 2020, and September 5, 2020. However, she continued working part time for her second employer, and her gross weekly earnings during this period ranged from $201.95 to $319.80 per week. Consolidated Findings ## 35–40. As the claimant continued to earn in excess of the $150.67 weekly benefit amount plus earnings disregard, she was not in partial unemployment under G.L. c. 151A, § 1(r)(1), between July 26, 2020, and September 5, 2020.

On September 8, 2020, the claimant returned to her full-time position with the instant employer. Consolidated Finding # 13. As she had returned to working a full-time schedule beginning the week of September 6, 2020, she was not in unemployment within the meaning of G.L. c. 151A, § 1(r), as of that date.

We, therefore, conclude as a matter of law that the claimant was not in total or partial unemployment within the meaning of G.L. c. 151A, §§ 29 and 1(r), beginning April 5, 2020, and for subsequent weeks, because she earned more than her weekly benefit amount plus earnings disregard during each week she was not working a full-time schedule.

The review examiner's decision is affirmed. The claimant is denied benefits for the week beginning April 5, 2020, and for subsequent weeks, until such time as she meets the requirements of G.L. c. 151A.



BOSTON, MASSACHUSETTS
DATE OF DECISION - January 30, 2024

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.

LSW/rh