

Severance payment was not remuneration under G.L. c. 151A, § 1(r)(3), because the payment was received in connection with a plant closing.

**Board of Review
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Issue ID: 0065 7004 32

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 separated from her employer on March 12, 2021. She filed a claim for unemployment benefits with the DUA, which was determined to be effective on March 14, 2021. On May 1, 2021, the agency issued a Notice of Disqualification under G.L. c. 151A, § 1(r)(3), which informed the claimant that she was not eligible for benefits between March 14, 2021, and March 27, 2021, because the severance pay that she received from the employer constituted remuneration. 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 September 10, 2021. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant received remuneration pursuant to G.L. c. 151A, § 1(r)(3), and, thus, she was disqualified from receiving benefits 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 pertaining to the closing of the claimant's work location. 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 employer's \$850.00 lump sum payment was disqualifying remuneration under G.L. c. 151A, § 1(r)(3), is supported by substantial and credible evidence and is free from error of law, where the consolidated findings after remand show that the payment the claimant was given was made in connection to a plant closing.

Findings of Fact

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

1. The claimant worked part-time as a cashier for the employer's retail business from 8/14/18 until 3/12/21. The claimant worked from 8:00 a.m. until approximately 3:00 p.m. on Monday through Friday and was paid \$14.65 per hour.
2. The claimant worked at the employer's business that was located at [Address A] in [Town A].
3. On 3/12/21, the employer closed the [Town A] location where the claimant worked. The employer notified the claimant that she would be eligible for severance pay if she continued working until the last day of business.
4. The employer provided the claimant a lump sum payment of \$850, which equaled two weeks of the claimant's regular pay. The claimant was not required to sign a release of claims or perform any duties in order to receive the payment.
5. The claimant filed an initial claim for unemployment insurance benefits, effective 3/14/21.
6. On 8/11/21, the claimant completed a DUA factfinding questionnaire, confirming that she received a lump sum payment of \$850 and that her regular pay rate was \$425 per week.
7. On 5/1/21, the DUA issued the claimant a Notice of Disqualification, finding her ineligible for benefits for the two-week period of 3/14/21 through 3/27/21.
8. On 5/11/21, the claimant appealed the Notice of Disqualification.
9. On 9/20/21, the DUA determined that the closure of the claimant's worksite meets the definition of a plant closing.

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's severance payment was disqualifying remuneration.

In order for the claimant to receive unemployment benefits, she must be in some state of unemployment. G.L. c. 151A, § 29(b), authorizes benefits to be paid to those in partial unemployment. Partial unemployment is defined at G.L. c. 151A, § 1(r)(1), which provides, in relevant part, as follows:

“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....

G.L. c. 151A, § 29(a), authorizes benefits to be paid to those in total unemployment. Total unemployment is defined at G.L. c. 151A, § 1(r)(2), which provides, in relevant part, as follows:

“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’s consolidated findings indicate that upon being laid off by her former employer due to the closing of her work location on March 12, 2021, the claimant ceased performing any services. The question before us is whether, even though the claimant did not work for the employer, she still continued to receive remuneration. If she did not receive remuneration, she was in total unemployment. If she received remuneration that was less than her weekly benefit rate,¹ then she was in partial unemployment.

Remuneration is defined, in relevant part, at G.L. c. 151A, § 1(r)(3), as the following:

[A]ny 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; provided, however, that for the purposes of this chapter, "remuneration" shall not include any payments made pursuant to subsections (b) and (c) of section one hundred and eighty-three, and subsection (b) of section one hundred and eighty-four of chapter one hundred and forty-nine, nor shall it include payment for unused vacation or sick leave, or the payment of such termination, severance or dismissal pay, or payment in lieu of dismissal notice, made to the employee in a lump sum in connection with a plant closing, nor shall this clause affect the application of subsection (d) of section twenty-nine.

Also relevant in this appeal is 430 CMR 4.41(2), which provides, in pertinent part as follows:

The term "remuneration" shall not include payment of termination, severance or dismissal pay, or payment in lieu of dismissal notice made to an employee in a lump sum in connection with a plant closing.

¹ The DUA’s electronic record-keeping system, UI Online, shows that the claimant’s weekly benefit rate for this claim was \$241.00.

In the instant case, Consolidated Findings ## 3 and 4 show that the claimant received a lump sum severance payment of \$850.00 after her work location closed on March 12, 2021, and she was separated from the employer. The lump sum equaled two weeks of the claimant's regular weekly pay of \$425.00. *See Consolidated Findings ## 4 and 6.* Furthermore, on September 20, 2021, the agency determined that the employer's closure of the claimant's work location met the definition of a plant closing. *See Consolidated Findings ## 2 and 9.*

Because the payment was made in connection with a plant closing, we conclude as a matter of law that the claimant's receipt of the lump sum payment does not constitute remuneration for the purposes of G.L. c. 151A, § 1(r)(3). Thus, the claimant was in unemployment within the meaning of G.L. c. 151A, § 29(a), during the two weeks to which the lump sum payment was applied, the weeks ending March 20, 2021, and March 27, 2021. *See Consolidated Finding # 7.*²

The review examiner's decision is reversed. The claimant is entitled to receive unemployment benefits pursuant to G.L. c. 151A, §§ 29 and 1(r), for the period beginning March 14, 2021, through March 27, 2021, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - February 1, 2022



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

² Pursuant to 430 CMR 4.40(2), "The commissioner may apply a lump sum payment to the week or weeks following the employee's separation by dividing such lump sum by the employee's average weekly wage as determined under M.G.L. c. 151A, § 1(w)."

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.

SVL/rh