

Pursuant to G.L. c. 151A, §§ 29 and 1(r), the claimant paraprofessional was in total unemployment during the summer weeks that she did not work. Once she resumed work at the end of the summer and earned more than her weekly benefit amount plus earnings disregard, she was neither in total nor partial unemployment, and thus, not eligible for benefits.

**Board of Review
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Issue ID: 0071 1681 73

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, effective May 30, 2021. In a determination issued on July 21, 2021, the DUA ruled that she was entitled to partial benefits beginning July 4, 2021. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner modified the agency's initial determination and denied benefits from July 4 to October 9, 2021, in a decision rendered on January 6, 2023. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not in unemployment within the meaning of G.L. c. 151A, §§ 29 and 1(r), and, thus, she was disqualified from receiving benefits. 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 further information about her earnings during the relevant period. 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 the claimant was not in unemployment because she was working full-time from July 4 to October 9, 2021, 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. On 10/31/18, the claimant began working for this employer's town public school system as a substitute teacher.

2. On 8/20/19, this employer hired the claimant to work as a fulltime 30.1 hour per week union Paraprofessional.
3. The employer considers 30.1 hours per week to be fulltime.
4. The claimant had union contracts and letters of reasonable assurance for both the 2020–2021 and 2021–2022 school years. The claimant’s job was never in any jeopardy if she wanted to continue to work for this employer.
5. During the 2020–2021 school year, the claimant was working 31.1 hours per week at a union rate of \$12.67 per hour or \$394.03 gross per week.
6. During the 2021–2022 school year, the claimant was working 31.1 hours per week at a union rate of \$12.80 per hour or \$398.08 gross per week.
7. On 6/9/21, the claimant filed a new claim for unemployment benefits effective 5/30/21.
8. The claimant’s weekly benefit rate was \$175.00, and her weekly earnings disregard amount was \$58.33. Adding these amounts equals \$233.33.
9. On 7/21/21, the employer was sent a Notice of Approval under MGL c. 151A Sections 29(a), 29(b) and 1(r) of the law beginning 7/4/21. The Notice of Approval noted that the claimant was hired to work a part-time schedule, was accepting all work, and was therefore entitled to partial benefits for any week she worked less than fulltime. The employer requested a hearing.
10. While filing for benefits, the claimant was not accurately reporting her gross weekly earnings to DUA.
11. During the period from 8/31/21 through the week ending 10/9/21, the claimant was working fulltime as she was earning gross wages in excess of her weekly benefit rate plus her earnings disregard amount and therefore was not in unemployment.
12. On 1/6/23, the parties were sent a Hearing Decision reversal finding for the employer that the claimant was employed fulltime and was not in unemployment during the weeks at issue.
13. In reviewing the “Green Letter” from the employer to the claimant dated September 2020 the parties agreed that the claimant was paid during 22 pay periods in the 2020–2021 academic year. The claimant had the choice to be paid her 10-month contract over 22 weeks or 26 weeks and the claimant chose to be paid over 22 weeks.
14. The end date of the final pay period in 2021 was 6/24/21.

15. The claimant did not perform any work or receive any pay from the employer during the summer school break in 2021. There were summer jobs posted by the employer, but the claimant did not apply for any of the summer positions.
16. On 8/31/21, the claimant returned to her Paraprofessional position with this employer.
17. On 10/5/21, the claimant resigned from her job with this employer with an effective end date of 10/14/21. The claimant offered no reason to the employer about why she quit her job.

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. After such review, the Board adopts the review examiner's consolidated findings of fact except as follows. We do not accept the portion of Consolidated Finding # 4, which refers to "letters of reasonable assurance," as this is a legal determination under a separate provision of the statute, which was not before the review examiner in this case. We also disregard the portion of Consolidated Finding # 11, which concludes that the claimant was not in unemployment, as that is a legal conclusion, which, at this point in the proceedings, is for the Board to decide. *See Dir. of Division of Employment Security v. Fingerman*, 378 Mass. 461, 463–464 (1979). In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, after remand, we disagree that the claimant was ineligible for benefits during the entire period on appeal.

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; 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.

In his initial decision, the review examiner disqualified the claimant on the ground that she had been paid her full-time earnings during the entire period from July 4 to October 9, 2021. Because she was working, he concluded that she was not in total unemployment. Because the claimant's

weekly gross wages exceeded her weekly benefit amount plus earnings disregard (\$233.00), he concluded that she was also not in partial unemployment. *See Consolidated Findings ## 6 and 8.*

However, after remand, the record is more clear that the claimant did not work, nor was she paid, from the week beginning June 27, 2021, through the week ending August 28, 2021. *See Consolidated Findings ## 14–16.* Thus, she was in total unemployment during this period.¹

Starting with the week beginning August 28, 2021, she resumed work and earned her full weekly wages of \$398.08, until she resigned effective October 14, 2021. *See Consolidated Findings ## 6, 11, and 17.* Inasmuch as her weekly wages exceeded \$233.00 (her weekly benefit amount plus earnings disregard) during this period, she was neither in total nor partial unemployment.

We, therefore, conclude as a matter of law that pursuant to G.L. c. 151A, §§ 29 and 1(r), the claimant was in total unemployment from June 27, 2021, to August 28, 2021. We further conclude that she was neither in total nor partial unemployment from August 29 to October 16, 2021.

The review examiner's decision is affirmed in part and reversed in part. The claimant is entitled to receive benefits from June 27 to August 28, 2021, if otherwise eligible. She is denied benefits from August 29 to October 16, 2021.

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 28, 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

¹ Our decision would not change if the claimant had opted to have her school year wages extended over 26 pay periods. Pursuant to the definition of remuneration under G.L. c. 151A, § 1(r)(3), the DUA must apply any wages received by the claimant to the week or weeks in which they were earned, regardless of whether the employer disperses those wages to the claimant at a later date.

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.

AB/rh