

**Because the claimant only performed wage-earning services since the beginning of the previous benefit year for which she was paid less than three times the benefit rate of her previous claim, she is not eligible to receive benefits on her subsequent claim, pursuant to G.L. c. 151A, § 31.**

**iBoard of Review  
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**Issue ID: 0074 1163 88**

### Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA), which concluded that the claimant was not monetarily eligible to receive benefits on an unemployment claim effective October 10, 2021. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

The claimant separated from her position with her previous employer on September 30, 2020, and filed a 2020-01 claim for unemployment benefits effective September 27, 2020. This claim expired on September 25, 2021. She then filed a new 2021-01 claim effective October 10, 2021. On November 22, 2021, the DUA sent the claimant a Monetary Determination, which informed her that she could not collect benefits on this new unemployment claim because she did not meet the requirements of G.L. c. 151A, §§ 24(a), 1(a), and 1(s). The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by the claimant, the review examiner affirmed the agency's Monetary Determination. We accepted the claimant's application for review.

The review examiner determined that the claimant had not been paid sufficient remuneration during her base period to be monetarily eligible for benefits pursuant to the statutory requirements set out in G.L. c. 151A, § 24(a). 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 base period earnings and provide the claimant with adequate notice of other potentially applicable sections of law. 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 monetarily eligible for benefits as the settlement payments the claimant received from her previous employer during her base period were not remuneration and, as such, could not be used to establish a claim, 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 last worked on September 30, 2020. She filed a claim for UI benefits which has since expired.
2. During the four days from Sunday September 27, 2020, to Wednesday September 30, 2020, the claimant performed wage earning services and was paid gross wages of \$900.
3. The claimant's total weekly wages were \$1,125 for the week ending October 3, 2020 (the week that included September 27, 2020, to September 30, 2020) because the claimant was paid for a 5-day week.
4. The claimant was paid on a bi-weekly basis. The claimant's weekly salary was \$1,125.
5. The claimant did not work and had no earnings from any other employer during the period between September 27, 2020, and July 10, 2021. In parts of July and August 2021, the claimant worked on special projects for her prior employer.
6. During the week ending July 17, 2021, the claimant performed services and received gross wages of \$125. The claimant reported this income to DUA when she filed a claim for benefits that week.
7. During the week ending July 24, 2021, the claimant performed services and received gross wages of \$125. The claimant reported this income to DUA when she filed a claim for benefits that week.
8. During the week ending July 31, 2021, the claimant performed services and received gross wages of \$125. The claimant reported this income to DUA when she filed a claim for benefits that week.
9. During the week ending August 28, 2021, the claimant performed services and received gross wages of \$375. The claimant reported this income to DUA when she filed a claim for benefits that week.
10. Since August 28, 2021, the claimant has had no wages and no other employment.
11. On October 13, 2021, the claimant filed a claim for unemployment (UI) benefits with an effective date of October 10, 2021 (claim ID 2021-01).
12. The primary base period of the 2021-01 claim is October 1, 2020, to September 30, 2021.

13. The alternative base period of the 2021-01 claim is January 1, 2021, to October 9, 2021.
14. In the base period of the 2021-01 claim, the claimant received two settlement payments, one on April 15, 2021, for \$6,416 and a second payment on September 15, 2021, for \$10,000.
15. The claimant received the payments pursuant to a “Confidential Settlement Agreement and General Release of All Claims,” (“settlement agreement” or “agreement”) and the agreement included Exhibits A and B.
16. The two payments were made after the two general releases of liability claims were signed by the prior employer and the claimant on two separate dates. Pursuant to section 3 of the agreement, the payments are termed “severance pay” subject to compliance with the agreement and signing the general release of claims.
17. The payments were made by the employer to the claimant to avoid future litigation.
18. On May 29, 2021, earnings of \$6,416 were reported for the week ending April 17, 2021, and a Notice of Disqualification denied the claimant benefits for the week ending April 17, 2021, because her income exceeded her weekly benefit amount of \$553, plus the earnings disregard of \$187.67.
19. The claimant did not report the \$10,000 payment as earnings in a weekly certification because she was not certifying for unemployment benefits when the payment was issued on September 15, 2021.
20. The 2021-01 claim was determined to be ineligible due to insufficient wages and the claimant appealed.
21. The claimant had no wages in the primary or alternative base period.

Credibility Assessment:

The claimant offered substantially consistent testimony between the original hearing and the remand hearing. During the original hearing, the claimant testified that she last worked on September 30, 2020, however in the remand hearing the claimant further clarified about work she performed for the same employer for three weeks in July 2021 and one week in August 2021, where she earned wages totaling \$750. The claimant testified she earned \$900 from September 27, 2020, to September 30, 2020, based on a salary of \$1,125 a week, paid bi-weekly. The claimant’s testimony about receiving settlement payments in the amount of \$6,416 on April 15, 2021, and \$10,000 on September 15, 2021, was consistent with the documentation she presented in the original hearing of such settlements. While the claimant maintained that she initially reported the \$6,416 settlement as earnings on

her weekly certification for the week ending April 17, 2021, the May 29, 2021, Notice of Disqualification establishes that this settlement was not reported until late May 2021.

### 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 reject Consolidated Finding # 21 as internally inconsistent with Consolidated Findings ## 6–9, and contrary to the uncontested evidence of record. In adopting the remaining findings, we deem 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, we believe that the review examiner's consolidated findings of fact support the conclusion that the claimant is not entitled to benefits.

The review examiner initially found the claimant was not monetarily eligible for benefits under G.L. c. 151A, § 24(a). However, when a claimant files a new claim for benefits immediately after their previous claim has expired, they must also satisfy the requirements of G.L. c. 151A, § 31, which provides as follows:

No individual may receive benefits in a subsequent benefit year unless, since the beginning of the previous benefit year during which he received benefits, he performed service for an employer subject to this chapter and has been paid wages for such service of not less than three times his weekly benefit rate for said previous benefit year.

In this case, the “subsequent benefit year” is the benefit year beginning October 10, 2021, and the “previous benefit year” is the benefit year beginning September 27, 2020. A review of the DUA's electronic database, UI Online, shows the DUA determined the claimant's weekly benefit rate for her 2020-01 claim to be \$563.00. Therefore, in order to meet the requirements of G.L. c. 151A, § 31, the claimant must show she “performed service for an employer” and has “been paid wages for such service of not less than” \$1,689 (\$563 x 3) at some point after September 27, 2020.

Relevant to the analysis under G.L. c. 151A, § 31, the review examiner found that the claimant was paid \$900 for four days of work between Sunday, September 27, 2020, and Wednesday, September 30, 2020, and another \$750 for services rendered to the instant employer in July and August of 2021. Consolidated Findings ## 2, and 6–9. While the claimant was also paid two settlement payments totaling \$16,416 in the period between September 27, 2020, and October 10, 2021, she received these payments pursuant to a settlement agreement, not as payment for services rendered to any employer. *See* Consolidated Findings ## 15 and 16. As the language of G.L. c. 151A, § 31, requires the DUA consider only wages paid to the claimant after the start of the prior benefit year for *services performed* to an employer, the two settlement payments may not be counted.

Because the claimant did not perform work for any other employer after September 27, 2020, the consolidated findings show the claimant was paid gross wages totaling \$1,650 for services performed between the start of her previous benefit year and the start of her subsequent benefit year. *See Consolidated Findings ## 2 and 5–10.* This amount falls short of the \$1,689.00 the claimant must have been paid during the relevant period in order to be monetarily eligible for benefits under G.L. c. 151A, § 31, for her 2021-01 claim.

We, therefore, conclude as a matter of law that the review examiner’s conclusion that the claimant is not monetarily eligible for benefits on her claim, effective October 10, 2021, is supported by substantial and credible evidence and free from error of law.

The review examiner’s decision is affirmed. The claimant is not monetarily eligible for benefits on her 2021-01 claim.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - September 25, 2023**



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](http://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