

Board of Review
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Issue ID: 0076 0816 14

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.

On April 22, 2022, the agency initially determined that the claimant was not entitled to unemployment benefits. The claimant appealed, and both parties attended the hearing. In a decision rendered on January 19, 2023, the review examiner modified the agency determination, concluding that the claimant had reasonable assurance of re-employment pursuant to G.L. c. 151A, § 28A, only for his position as a part-time crossing guard, and did not have reasonable assurance for his position as a part-time courier. The Board accepted the claimant's application for review.

Ruling of the Board

After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we conclude that the review examiner's decision is based on substantial evidence and is free from any error of law affecting substantive rights.

While we agree with the review examiner's legal conclusion that the claimant had reasonable assurance of re-employment only for his part-time crossing guard position, we believe that an overpayment may have been improperly generated as a result of this decision. When the claimant requested benefits during the weeks between June 20, 2021, and August 7, 2021, he was certifying under his 2020-01 claim. The base period of his 2020-01 claim ran from July 1, 2019, through June 30, 2020. During this period, the claimant did not work as a crossing guard for the instant employer. The only wages paid to the claimant during the base period of his 2020-01 claim were for his work as a courier. As the review examiner properly concluded that the claimant did not have reasonable assurance of re-employment for his part-time courier position, those wages are not excluded under G.L. c. 151A, § 28A. He is, therefore, entitled to a weekly benefit amount under his 2020-01 claim based on all wages paid to him during his base period.

The review examiner's decision is affirmed. However, from the week of June 20, 2021, through August 8, 2021, the claimant is entitled to a weekly benefit amount based upon base period wages of \$23,027.34, if he is otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - February 28, 2024



Charlene A. Stawicki, Esq.
Member



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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