

Relocation expenses paid to the claimant are a form of bonus and constitute wages for the purpose of calculating the claimant's monetary eligibility for benefits. They are attributed to the quarter in which they were paid to the claimant, not the quarter in which the employer reported them to the DUA.

**Board of Review
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Issue ID: 0076 6596 84

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) which found her eligible for an unemployment claim with a benefit rate of \$401.00 per week. 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 March 29, 2020. On April 4, 2020, the DUA sent the claimant a monetary determination, which informed her that she was monetarily eligible for an unemployment claim with a benefit rate of \$401.00 per week. 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 initial determination in a decision rendered on July 30, 2022. We accepted the claimant's application for review.

The review examiner affirmed the agency's monetary determination, after she concluded that the claimant's base period wages had been properly reported and considered when the DUA established the claim for benefits pursuant to the provisions of G.L. c. 151A, §§ 24 and 1. After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we accept the claimant's application for review. 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's compensation for relocation expenses were properly attributed as wages during the fourth quarter of 2019 based upon the earnings statements provided by the employer, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. Prior to the claimant working for the employer, the claimant was living in the State of New York.

2. The claimant applied to work for the employer in Massachusetts. The employer offered the claimant a job in Massachusetts. The employer also offered the claimant relocation payments as an incentive to work for the employer in Massachusetts.
3. In May 2019, the claimant relocated from the State of New York to the Commonwealth of Massachusetts.
4. On May 18, 2019, the claimant started working for the employer as a Software Developer. The claimant worked in Massachusetts for the employer.
5. During the 2nd Quarter of 2019 (April 2019 through June 2019), the employer provided the claimant with relocation expenses in a combination of a lump sum and purchase of a train ticket. The employer provided the claimant with the relocation expenses through the services of a Third-Party Administrator.
6. Prior to filing an initial claim for unemployment benefits, the claimant's last date of work for the employer was August 16, 2019. At this time, the employer discharged the claimant for a lack of work.
7. The claimant filed an initial unemployment claim effective the week beginning March 29, 2020 (hereinafter 2020-01 unemployment claim). This claim's expiration date is March 27, 2021. The employer is the only base period employer on this claim.
8. On the claimant's 2020-01 unemployment claim, the claimant's primary base period runs from the 1st Quarter 2019 (January-March 2019) through the 4th Quarter 2019 (October-December 2019).
9. On April 4, 2020, the Department of Unemployment Assistance (hereinafter DUA) issued a Monetary Determination to the claimant. On this determination, the DUA lists the following information:

“Included in this correspondence are your base period wages and employer(s) according to our records. These wages were used to calculate your Weekly and Maximum Benefit Amounts. The amounts listed are based on wages paid during the base period: 1/1/2019 to 12/31/2019.

Weekly Benefit Amount: \$401.00

Maximum Benefit Amount available during your benefit year: \$9,801.00

Dependency Allowance: \$0.00

Additional Compensation: \$0.00

Benefit Year Effective Date: 3/29/2020

Benefit Year End Date: 3/27/2021

Pension Deduction: \$0.00

Earnings Exclusion: \$133.67

Average Weekly Wage: \$802.00

Employer Name	Jan - Mar 2019	Apr - June 2019	July - Sept 2019	Oct - Dec 2019	Total Gross Wages Paid
		\$6,708.46	\$14,123.08	\$6,394.59	\$27,226.13
Totals:	\$0.00	\$6,708.46	\$14,123.08	\$6,394.59	\$27,226.13

10. The employer reported to the DUA the claimant's paid wages for the 4th quarter 2019 as \$6,394.59.
11. The claimant appealed the Monetary Determination issued on April 4, 2020.
12. The claimant is requesting for the DUA to apply the claimant's initial reported wages from the employer's establishment listed in the 4th Quarter 2019 to the 2nd Quarter 2019 as these were relocation payments the claimant received from a Third Party Administrator on behalf of the employer during the 2nd Quarter of 2019. The claimant hopes by adjusting the wages properly the claimant may be entitled to a higher unemployment benefit rate on his 2020-01 unemployment claim when the DUA's monetary calculation is applied. The claimant believes the employer reported wages during the 4th Quarter of 2019 to the DUA as an accounting practice on the employer's end to reflect the relocation payments.
13. On an Earnings Statement (Advice Number 00000514356) from the employer's establishment issued to the claimant with a Pay Date of December 19, 2020, the employer listed a gross wage amount of \$5,570.49 titled "Relo Gross Up."
14. On an Earnings Statement (Advice Number 00000514357) from the employer's establishment issued to the claimant with a Pay Date of December 19, 2020, the employer listed a gross wage amount of \$824.10 titled "Relo Gross Up."
15. On an Employee Expense Detail Report from the employer's Third-Party Administrator, the following information is listed:

Allowances

Date	Expense Type	Description	Submitted Amount	Cur	Expense Amount (USD)	Grossup (USD)	Total Amount (USD)
05/30/2019	Hsng Allow	Intern Housing Allowance (5/28 - 5/31/19)	177.40	USD	177.40	0.00	177.40
05/30/2019	Hsng Allow	Intern Housing Allowance (6/1 - 6/30/19)	1,375.00	USD	1,375.00	0.00	1,375.00
05/30/2019	Hsng Allow	Intern Housing Allowance (7/1 - 7/31/19)	1,375.00	USD	1,375.00	0.00	1,375.00
05/30/2019	Hsng Allow	Intern Housing Allowance (8/1 - 8/16/19)	709.60	USD	709.60	0.00	709.60
					3,637.00	0.00	3,637.00

Final Move

Date	Expense Type	Description	Submitted Amount	Cur	Expense Amount (USD)	Grossup (USD)	Total Amount (USD)
06/06/2019	FMV Afare EE	Final Move 05/23-08/17/19 Airfare (EE) RECORD ONLY	535.00	USD	535.00	0.00	535.00
					535.00	0.00	535.00

Tax Assistance

Date	Expense Type	Description	Submitted Amount	Cur	Expense Amount (USD)	Grossup (USD)	Total Amount (USD)
12/31/2019	Tax Assistance	Tax Assistance	0.00		0.00	1,758.35	1,758.35
					0.00	1,758.35	1,758.35
Grand Total					4,172.00	1,758.35	5,930.35

16. In a letter dated April 28, 2022, the employer’s Third-Party Administrator wrote:

“[claimant] was sent a deposit by [Third-Party Administrator] in the amount of \$3,637.00 USD on June 3, 2019 to their [baking institution] Bank account. These funds were processed on behalf of their employer [employer] for their position in [City A], MA. If you have any questions please don’t hesitate to reach out to me directly. Thank you.”

17. In a letter dated May 3, 2022, the employer’s Third-Party Administrator wrote:

“[claimant] was reimbursed by [Third Party Administrator] in the amount of \$535.00 on June 6, 2019 to their [Banking Institution] for an Amtrak ticket purchased. These funds were processed on behalf of their employer [employer] for their position in [City A], MA. If you have any questions please don’t hesitate to reach out to me directly. Thank you.”

Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the findings are supported by substantial and credible evidence; and (2) whether the review examiner’s ultimate conclusion is free from error of law. Upon such review, the Board adopts the review examiner’s 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 relocation payments the claimant received were properly attributed to the fourth quarter of 2019.

To be eligible for unemployment benefits, individuals must meet the requirements of G.L. c. 151A, § 24(a), which provides, in pertinent part, as follows:

An individual, in order to be eligible for benefits under this chapter, shall—

- (a) Have been paid wages in the base period amounting to at least thirty times the weekly benefit rates

Also relevant to this issue is G.L. c. 151A, § 1(s)(A), which defines the term ‘wages’, in pertinent part, as follows:

[E]very form of remuneration of an employee subject to this chapter for employment by an employer, whether paid directly or indirectly, including salaries, commissions and bonuses, and reasonable cash value of board, rent, housing, lodging, payment in kind and all remuneration paid in any medium other than cash.

...

The review examiner concluded that the relocation expenses paid to the claimant through the third-party administrator were wages for the purposes of determining the claimant’s monetary eligibility for benefits. We agree. As they were offered as incentive pay, we view them as a form of bonus. *See* Finding of Fact # 2.

However, the review examiner also concluded that the relocation expenses were wages properly attributed to the fourth quarter of 2019. In so holding, she relied on two Earnings Statements for the pay period ending December 19, 2019, submitted by the employer. *See* Findings of Fact ## 13 and 14. We believe this is a misapplication of the law.

In Naples v. Comm’r of Department of Employment and Training, the Supreme Judicial Court (SJC) explained that the language of G.L. c. 151A and its associated regulations was clear as to how employers should report wages. 412 Mass. 631, 634 (1992). The SJC held that “the Legislature intended that employers must report wages in the quarter in which they are ‘paid,’ . . . and that ‘average weekly wage’ includes those wages ‘paid’ to an employee in an appropriate quarter.” *Id.* The fact that the relocation compensation was paid to the claimant through a third-party administrator does not alter this analysis. *See* G.L. c. 151A, § 1(s)(A). Accordingly, the DUA must attribute any wages, whether paid directly or indirectly, to the quarter in which they were *actually* paid to the claimant.

While the employer reported the relocation compensation on Earnings Statements issued in the fourth quarter of 2019, there was no dispute that the claimant was *paid* this compensation during the second quarter of 2019. Findings of Fact ## 5, 13, 14, 16, and 17. Therefore, in accordance with the SJC’s holding in Naples, we conclude that the \$6,394.59 gross wages that the claimant received as relocation compensation should be attributed to the second quarter of 2019.

Pursuant to G.L. c. 151A, § 29(a), a claimant’s weekly benefit amount equals fifty per cent of his or her average weekly wage during the quarter in which he or she earned the most wages. For an individual with more than two quarters of wages, the average weekly wage is an amount equal to “one twenty-sixth of the total wages reported for an individual in the two highest quarters of his base period.” G.L. c. 151A, § 1(w). As the relocation payments were paid to the claimant in the second quarter of 2019, a proper accounting of her earnings is as follows:

1 st Quarter 2019	2 nd Quarter 2019	3 rd Quarter 2019	4 th Quarter 2019
\$0.00	\$13,103.05	\$14,123.08	\$0.00

Because the claimant only had earnings during two quarters of her base period, we will calculate her weekly benefit amount based on her weekly earnings during the third Quarter of 2019. *See* G.L. c. 151A, § 29(a). The claimant had gross earnings of \$14,123.08, or \$1,086 per week (rounded to the nearest dollar) in the third quarter of 2019. Half of the claimant’s weekly earnings during the third quarter is \$543. Therefore, after properly assigning the claimant’s wages to the quarters in which they were paid, the record shows the claimant is entitled to a weekly benefit amount of \$543.

We, therefore, conclude as a matter of law that the claimant is eligible for an unemployment claim with a weekly benefit rate of \$543.00 per week.

The review examiner’s decision is affirmed in part and reversed in part. The claimant is eligible for an unemployment claim, effective March 29, 2020, with a benefit rate of \$543.00 per week.



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 19, 2022

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