Because the claimant is receiving a monthly pension payment from a plan that was wholly funded by his former base period employer and the base period services increased his pension amount, his weekly benefit amount under this claim must be reduced by the entire pension pursuant to G.L. c. 151A, § 29(d)(6). Since the claimant's pension amount exceeds his weekly benefit amount, his weekly benefit amount is $0.

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Issue ID: 0077 0066 80

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.

The claimant filed his 2021-01 claim for unemployment benefits with the DUA, effective July 4, 2021. On June 11, 2022, the DUA issued a determination under G.L. c. 151A § 29(d)(6), which stated that his weekly benefit rate would be reduced beginning April 3, 2022, by one hundred percent of his employer funded retirement benefit. 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 and denied benefits in a decision rendered on November 4, 2022. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant's pension was wholly funded by the employer, and, thus, it would be fully deducted from his weekly benefit amount, as required by G.L. c. 151A, § 29(d)(6). 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 claimant's pension contributions. 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's full pension payment had to be deducted from his weekly benefit amount because it was wholly funded by his employer, 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 was a member of the [Union Local Number] (Union).

2. On 7/6/2021, the claimant filed a new claim for unemployment insurance benefits, effective 7/4/2021.

3. The Department of Unemployment Assistance (DUA) determined the claimant's base period to be from 7/1/2020 to 6/30/2021.

4. The DUA established the claimant's weekly benefit rate to be $855.00 based on earnings from his base period employers which included wages earned as a Union electrician.

5. During his base period, the claimant worked for two Union employers, [Employer A] and [Employer B].

6. As part of the "total package" offered by the Union, the claimant received an hourly wage and a separate hourly pension wage.

7. The Union employers paid the claimant his hourly wage and paid the hourly pension wage into the claimant's pension maintained by the Union for each hour he worked.

8. The claimant retired from the Union on 4/1/2022.

9. The claimant had approximately thirty-seven (37) years of service as a member of the Union.

10. The claimant's pension was calculated based on his years of service in the Union, [sic] he received one good year of service after he worked 1,400 hours a year.

11. The Union multiplied the claimant's years of service by 123 to determine his monthly pension.

12. As of 4/1/2022, the claimant's gross monthly pension was calculated to be $5,714.54.

13. The claimant began receiving a monthly pension through the Union effective 4/1/2022, in the gross amount of $5,714.54, and the net amount of $4,700.51 which Union employers solely funded.

14. The claimant's monthly pension amount did not change between 4/1/2022 and 8/23/2022.

15. The claimant did not contribute to the pension.

16. The claimant's services for the base period employers affected the claimant's eligibility for the pensions because the pension was calculated using the claimant's total years of service.

17. The claimant's services for the base period employers increased the amount of the claimant's pension amount, because the pension was calculated using the claimant's total years of service up to April 2022.

Credibility Assessment:

The claimant provided a letter from the Union dated 8/9/2022 that confirmed the gross and net amounts of the claimant's monthly pension. Further, the claimant agreed with the letter's amount and testified that he had received the same amount from the start of his retirement. Given the totality of the claimant's testimony over both hearings, [sic] his documentation provided at both the initial and the remand hearing, the claimant's testimony is deemed credible.

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. 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. We further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented. As discussed more fully below, we agree with the review examiner's conclusion that the claimant's pension is deducted from his weekly benefit amount.

G.L. c. 151A, § 29(d)(6), mandates that a claimant's weekly benefit rate be reduced if he is receiving a pension under certain circumstances. Specifically, the statute provides, in relevant part, as follows:

> (d) An individual in unemployment and otherwise eligible for benefits, who is receiving, has received, or will receive payments in the form of retirement benefits, any part of which was financed by a base period employer, shall be paid for each week of unemployment an amount computed as follows:
>
> (6) Notwithstanding any of the foregoing provisions of this subsection, the amount of benefits otherwise payable to an individual for any week which begins in a period with respect to which such individual is receiving governmental or other pension . . . shall be reduced by an amount equal to the amount of such pension . . . which is reasonably attributable to such week; provided, further, that . . . such reduction shall apply only if a base period employer contributed to or maintained such pension . . . and . . . services of the individual for such employer during the base period affected eligibility for or increased the amount of such pension . . . and provided further, that if the individual contributed to such plan, the amount of benefits otherwise

> payable to such individual shall be reduced by fifty per cent of the amount of such pension . . . .

Pursuant to this statute, in order for the agency to apply a full pension deduction, certain conditions must be met. The reduction applies only if the base period employer contributed to or maintains the pension, and the services performed by the claimant during the based period affected eligibility for or increased the amount of the pension.

In this case, the claimant's base period employers contributed to his pension, as the employers paid his hourly wage and the hourly pension wage into the pension maintained by the union for each hour he worked. Consolidated Findings ## 5 and 7.

Further, his base period services appear to have increased the amount of the pension. His pension was calculated based on hours worked and years of service in the union, and 1,400 hours equaled a good year of service. *See* Consolidated Findings ## 9 and 10. The claimant had approximately 37 years of service. Consolidated Finding # 9.

In the base period, he earned $237,125.58 and his hourly wage rate was $56.36 per hour. *See* Exhibit 1 and 10.[1] Dividing $237,125.58 by his wage rate, $56.36, shows he worked approximately 4,207 hours during the base period. This is well beyond the 1,400 hours required for a good year of service.

Since the claimant did not contribute to his pension, his weekly benefit amount shall be reduced by his full weekly pension amount. *See* Consolidated Finding # 15. His gross monthly pension amount is $5,714.54. Divided by 4.3 weeks per month, the result is a weekly pension amount of $1,328.00.[2] Since the weekly pension is greater than his weekly benefit amount, he is not entitled to any benefits.

We, therefore, conclude as a matter of law that the claimant is subject to a full weekly pension deduction pursuant to the provisions of G.L. c. 151A, § 29(d)(6).

The portion of the review examiner's decision that reduced the claimant's weekly benefit amount commencing April 3, 2022, is affirmed. However, the reduction is corrected to $1,328.00. Since his pension exceeds his weekly benefit amount, his weekly benefit amount is $0. The reduction is effective beginning April 3, 2022, and for subsequent weeks.

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[1] Exhibit 1 is a December 22, 2021 paycheck. Exhibit 10 is a monetary summary screen showing reported base period wages from UI Online, DUA's electronic record-keeping system. While not explicitly incorporated into the review examiner's findings, these exhibits are part of the unchallenged evidence introduced at the hearing and placed in the record, and they are thus properly referred to in our decision today. *See* Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

[2] The weekly pension amount is derived by dividing the total monthly pension by 4.3 weeks, disregarding any fractional part of a dollar. *See* G.L. c. 151A § 29(d)(4).

BOSTON, MASSACHUSETTS
DATE OF DECISION - January 29, 2024

Paul T. Fitzgerald, Esq.
Chairman

Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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.

MR/rh