Pursuant to G.L. c. 151A, § 25(d), the claimant was not entitled to unemployment insurance benefits between June 24, 2022, and September 5, 2022, because she was receiving temporary total disability benefits through a workers' compensation claim.

Board of Review
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Issue ID: 0078 1790 63

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, which was denied beginning August 28, 2022, in a determination issued on June 1, 2023. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by the claimant, the review examiner affirmed in part and reversed in part the agency's initial determination and denied benefits for the weeks between August 2, 2022, and September 5, 2022, in a decision rendered on July 21, 2023. We accepted the claimant's application for review.

Benefits were denied during this period after the review examiner determined that the claimant was receiving workers' compensation for the weeks between August 2, 2022, and September 5, 2022, and, thus, was disqualified under G.L. c. 151A, § 25(d). Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant was not entitled to benefits during the period between August 2, 2022, and September 5, 2022, because she was receiving workers' compensation benefits during those weeks, 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. The claimant worked, as a dental hygienist, for the employer, a dentist, from June 15, 2019, until on or about May 23, 2022. At that time, she stopped working due to a workplace injury.

2. On June 5, 2022, the claimant filed a claim for unemployment benefits, effective May 29, 2022. Her benefit rate on his claim is $611 and her earnings disregard is $203.67.

3. The employer filed a workplace injury report with its insurer.

4. On August 2, 2022, the insurance prepared a form 103, stating that it had accepted the claim. They indicated that the claimant's estimated average weekly wage was $100 and mailed the claimant a payment of $500 for the period through July 28, 2022, for a total temporary incapacity.

5. On August 31, 2022, the employer's insurer paid the claimant $500, for the period of June 24, 2022, to July 28, 2022.

6. On September 7, 2022, the employer's insurer paid the claimant an additional $2,369.20, for the period of June 24, 2022, to September 1, 2022.

7. On August 31, 2022, the employer's insurer paid the claimant $400, for the period August 3, 2022, to August 30, 2022.

8. On August 29, 2022, the employer prepared a form 106, stating that the claimant was released to work full duty on August 24, 2022, and that the claim was being terminated with 7 days' notice.

9. The employer's insurer paid the claimant $186.76, for the period of September 2, 2022, to September 5, 2022.

10. The claimant returned to work sometime in December 2022, on a trial basis, to see if she could do the work. She worked for one day a week for three weeks. The claimant's hand swelled from this work, and she again stopped working.

11. On June 1, 2023, DUA issued Notice of Disqualification 0078 1790 63-01, stating that, under MGL 25(d), the claimant was subject to disqualification for the period of August 28, 2022, and thereafter, due to receiving total disability Workers' Compensation.

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 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 findings of fact and deems them to be supported by substantial and credible evidence. While we believe that the review examiner's findings of fact support the conclusion that the claimant was not in unemployment while receiving workers' compensation benefits, we believe that the review examiner erred in disqualifying the claimant only for the weeks between August 2, 2022, and September 5, 2022, as outlined below.

Massachusetts law prohibits an individual from receiving workers' compensation benefits for total incapacity and also receiving unemployment benefits. G.L. c. 151A, § 25(d), provides, in relevant part, as follows:

> No waiting period shall be allowed and no benefits shall be paid to an individual under this chapter for . . . Any period with respect to which he is receiving or has received or is about to receive compensation for total disability under the workers' compensation law of any state or under any similar law of the United States . . . .

The review examiner concluded that the claimant was eligible for benefits prior to August 2, 2022, because the DUA will not adjudicate a workers' compensation issue until a claimant's application for workers' compensation benefits is approved, and the claimant was not approved for temporary total disability benefits until August 2, 2022. *See* Finding of Fact # 4. However, such a conclusion represents only a portion of the applicable analysis.

Because G.L c. 151A, § 25(d), prohibits a claimant from receiving both unemployment insurance benefits and workers' compensation benefits in a given week, a claimant who is paid retroactively for specific weeks of total disability must reimburse the DUA for any overpaid benefits she received during those weeks. In this case, the workers' compensation claim information submitted by the claimant shows that she received weekly payments for total temporary disability benefits attributable to the period between June 24, 2022, and September 5, 2022. Findings of Fact ## 4–9. As the DUA begins each benefit week on a Sunday, the record shows that the claimant received compensation for temporary total disability attributable to each week between June 26, 2022, and September 3, 2022. Therefore, the claimant is not eligible for unemployment benefits during those weeks.

We, therefore, conclude as a matter of law that that the claimant is not entitled to benefits pursuant to G.L. c. 151A, § 25(d) during the period between June 26, 2022, and September 3, 2022, because she was receiving workers' compensation benefits for temporary total disability.

The review examiner's decision is affirmed in part and reversed in part. The claimant is denied benefits for the weeks of June 26, 2022, through September 3, 2022.

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 12, 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

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