

Severance payment was not remuneration under G.L. c. 151A, § 1(r)(3), and, therefore, did not affect the claimant’s weekly benefit amount, because she had to sign a release of claims in order to receive the lump sum payment.

**Board of Review
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Issue ID: 0078 4136 52

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 from October 9, 2022, through December 24, 2022. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant separated from her position with the employer on September 26, 2022. She filed a claim for unemployment benefits with the DUA, effective October 9, 2022, which was denied through December 24, 2022, in a determination issued on November 3, 2022. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the claimant, the review examiner affirmed the agency’s initial determination and denied benefits through December 24, 2022, in a decision rendered on May 16, 2023. We accepted the claimant’s application for review.

Benefits were denied after the review examiner determined that the claimant was not in unemployment between October 9, 2022, and December 24, 2022, and, thus, was disqualified during that period under G.L. c. 151A, §§ 29 and 1(r). 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 unemployment status during the period at issue. Only the claimant attended the remand hearing. Thereafter, the review examiner issued his 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 in unemployment between October 9, 2022, and December 24, 2022, because the severance payment she received constituted disqualifying remuneration, 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 are set forth below in their entirety:

1. The claimant worked full-time for the employer, an e-signature company, as a talent acquisition employee, beginning September 20, 2021. The claimant was paid \$1,972.50 weekly.

2. On September 26, 2022, the claimant separated from the employer.
3. The claimant received a lump sum severance payment in the amount of \$33,246.00, less deductions and withholdings, which payment represented 12 weeks of the claimant's base salary plus an amount sufficient for the claimant to purchase 3 months of medical, dental, and vision COBRA continuation coverage should the claimant elect to continue coverage.
4. The claimant was required to execute a CONFIDENTIAL SEPARATION AGREEMENT AND GENERAL RELEASE OF CLAIMS releasing the employer from all claims the claimant may or may not be entitled to [sic] receive the severance pay.
5. On September 29, 2022, the claimant executed a CONFIDENTIAL SEPARATION AGREEMENT AND GENERAL RELEASE OF CLAIMS releasing the employer from all claims the claimant may or may not be entitled to [sic] receive the severance pay.
6. The claimant would not have been paid the lump sum severance payment of \$33,246.00 had she not executed the CONFIDENTIAL SEPARATION AGREEMENT AND GENERAL RELEASE OF CLAIMS releasing the employer from all claims against the employer the claimant may or may not be entitled [sic].
7. On October 13, 2022, the claimant filed her claim for unemployment benefits with the Department of Unemployment Assistance (DUA) with an effective begin date of October 9, 2022, and an effective end of December 23, 2023.
8. On November 3, 2022, pursuant to Massachusetts General Law Chapter 151A, §1(r)(3), the DUA sent a Notice of Disqualification notifying the claimant it had been determined she was not entitled to benefits under Section 1(r)(3) of the law because she had received termination, severance, or dismissal pay, or payment in lieu of dismissal notice which constitutes remuneration as it was not a lump sum payment issued in connection with a plant closing and therefore she was not entitled to benefits beginning 10/9/2022 through 12/24/2022. As a result, the benefit year will be extended by 11 week(s) with a new benefit year expiration date of 12/23/2023.
9. On November 30, 2022, the claimant electronically appealed the November 3, 2022, Notice of Disqualification.

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. However, as discussed more fully below, we reject the review examiner’s legal conclusion that the claimant is not entitled to benefits through December 24, 2022.

To be eligible for unemployment benefits, the claimant must show that she is in a state of unemployment within the meaning of the statute. G.L. c. 151A, § 29, authorizes benefits to be paid to those in total or partial unemployment. Those terms are defined by G.L. c. 151A, § 1(r), which provides, in relevant part, as follows:

(1) “Partial unemployment”, an individual shall be deemed to be in partial unemployment if in any week of less than full-time weekly schedule of work he has earned or has received aggregate remuneration in an amount which is less than the weekly benefit rate to which he would be entitled if totally unemployed during said week

(2) “Total unemployment”, an individual shall be deemed to be in total unemployment in any week in which he performs no wage-earning services whatever, and for which he receives no remuneration, and in which, though capable and available for work, he is unable to obtain any suitable work.

As the claimant was laid off on September 26, 2022, and did not perform any wage-earning services after that date, the issue before the Board is whether the claimant received any disqualifying remuneration attributable to the period between October 9, 2022, and December 24, 2022. Remuneration is defined, in relevant part, at G.L. c. 151A, § 1(r)(3), as the following:

[A]ny consideration, whether paid directly or indirectly, including salaries, commissions and bonuses, and reasonable cash value of board, rent, housing, lodging, payment in kind and all payments in any medium other than cash, received by an individual (1) from his employing unit for services rendered to such employing unit . . . and (3) as termination, severance or dismissal pay, or as payment in lieu of dismissal notice, whether or not notice is required, or as payment for vacation allowance during a period of regular employment

As a general rule, G.L. c. 151A, § 1(r)(3), disqualifies a claimant from benefits while receiving severance, separation, or dismissal pay. However, the Massachusetts Appeals Court has held that payments made to a severed employee in return for a general release of claims were not disqualifying remuneration within the meaning of G.L. c. 151A, § 1(r)(3). White v. Comm’r of Department of Employment and Training, 40 Mass. App. Ct. 249, 252–253, *further app. rev. den’d.* (1996). If the claimant signed such a release of claims, the monies paid to her as severance will not be considered remuneration and she will be in unemployment.

Following remand, the review examiner found that the claimant had to sign a release of claims in order to receive the \$33,246.00 in severance pay. Consolidated Finding # 6. As such, we conclude that the claimant’s lump sum severance payment is not remuneration within the meaning of G.L. c. 151A, § 1(r)(3), because it was paid as consideration for signing the type of release of claims described in White.

The review examiner's decision is reversed. The claimant is not subject to disqualification, pursuant to G.L. c. 151A, §§ 29 and 1(r), for the period of time beginning October 9, 2022, through December 24, 2022, if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 29, 2023



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