

Claimant was not entitled to benefits pursuant to G.L. c. 151A, §§ 29 and 1(r), when he lost one of his two concurrent full-time jobs, because he was still working full-time. Similarly, he was not eligible for benefits when, again, he picked up a second full-time job, and took a leave of absence from one.

**Board of Review
100 Cambridge Street, Suite 400
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member
Michael J. Albano
Member**

Issue ID: 0078 7978 82

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, effective June 26, 2022, which was denied in a determination issued on January 5, 2023. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the claimant, the review examiner modified the agency's initial determination and denied benefits in a decision rendered on April 13, 2023. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not in total or partial unemployment and, thus, was disqualified under G.L. c. 151A, §§ 29 and 1(r). 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 in unemployment for the period beginning June 16, 2022, through week ending February 11, 2023, because he was working full-time for the instant 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. Since March 2021, the claimant works full-time (40 hours weekly) as an overnight residential counselor for the instant employer, a human services organization.
2. The claimant works Sunday to Thursday from 11:00 p.m. to 9:00 a.m.
3. The claimant's rate of pay is \$17.50.

4. From March 13, 2015, to March 13, 2022, the claimant worked full-time (40 hours weekly) as a director of operations for a second employer, also a human services organization. The claimant quit his employment with the second employer, after accepting a full-time position with the third employer, a staffing agency.
5. From March 15, 2022, to June 17, 2022, the claimant worked full-time (40 hours weekly) as a regional manager for the staffing agency. The staffing agency discharged the claimant on June 17, 2022, for a non-disqualifying reason.
6. On June 30, 2022, the claimant filed an initial application for unemployment benefits with the Department of Unemployment Assistance (DUA) with an effective date of June 26, 2022.
7. The claimant filed for unemployment benefits due to the loss of income from his position with the staffing agency. The claimant's employment with the instant employer did not change.
8. The claimant never filed a claim for unemployment benefits prior to the subject claim.
9. For the week beginning June 26, 2022, through the week ending September 24, 2022, the claimant filed weekly certifications requesting benefits.
10. For the week beginning June 26, 2022, through the week ending September 24, 2022, the claimant worked full-time for the instant employer. The claimant has not filed a request for benefits since the week ending September 24, 2022.
11. Since August 15, 2022, the claimant works full-time (40 hours weekly) as a director of residential housing for a fourth employer, a human services organization in Rhode Island. The claimant works Monday through Friday from 8:00 a.m. to 4:00 p.m. The claimant's annual salary is \$65,000.
12. The claimant did not report his employment with the Rhode Island employer in his weekly certifications requesting benefits.
13. Beginning on or about the second week of February 2023, the claimant is on an approved leave of absence with the instant employer due to the birth of his child.
14. As of April 11, 2023, the claimant's leave of absence with the instant employer is ongoing.
15. The claimant continues to work full-time for the Rhode Island employer.

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. As discussed more fully below, while we believe that the review examiner's findings of fact support the conclusion that the claimant was not entitled to benefits, we believe that the review examiner erred in disqualifying the claimant only through the period ending February 11, 2023.

G.L. c. 151A, § 29, authorizes benefits be paid only to those in "total unemployment" or "partial unemployment." These terms are, in turn, 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.

In the review examiner's analysis, she focused only on the claimant's status with the instant employer when she disqualified the claimant from receipt of benefits for the period June 16, 2022, through the week ending February 11, 2023, when the claimant began his leave of absence. Although we agree with the review examiner's legal conclusion that the claimant is not entitled to benefits, we disagree that G.L. c. 151A, §§ 29 and 1(r), limits our analysis to only the claimant's unemployment status with the instant employer.

A claimant's unemployment status under G.L. c. 151A, §§ 29 and 1(r), is not employer specific. In other words, when a claimant works for multiple employers during his benefit year, his unemployment status in any given week is based on an assessment of his work and earnings from all of his employers during that week.

Here, the claimant filed a claim for unemployment benefits when he separated from his full-time employment from the staffing agency. Findings of Fact ## 5 and 6. However, this was not the claimant's only employment. The claimant has a history of working two full-time jobs concurrently. *See* Findings of Fact ## 1, 4, 5, and 11. Upon his separation from the staffing agency, on June 17, 2022, the claimant had not experienced any changes to his full-time weekly schedule with the instant employer. Findings of Fact ## 1–3, and 7. In addition, as of August 15, 2022, not only did the claimant continue to work 40 hours each week for the instant employer, but he also obtained a second full-time job with a Rhode Island employer working a combined total of 80 hours each week. *See* Finding of Fact # 11. The findings reflect that the claimant continued to work two full-time jobs each week until the new year. Finding of Fact # 13.

The claimant testified that he requested and was approved a paternity leave of absence with the instant employer to begin in early February, 2023, and that his leave was scheduled to end in May of 2023. Findings of Fact ## 13 and 14.¹ Regardless of whether the claimant performed wage earning services for the instant employer after February, 2023, he was still employed full-time. While on leave from the instant employer, the claimant continued to work his full-time weekly schedule for the Rhode Island employer. Findings of Fact ## 11 and 15. Because the claimant did not work less than a full-time schedule in any given week since he filed his claim for benefits, he was not in partial or total unemployment within in the meaning of G.L. c. 151A, § 1(r).

We, therefore, conclude as a matter of law that the claimant was not in unemployment pursuant to G.L. c. 151A, §§ 29 and 1(r), beginning June 26, 2022, and indefinitely thereafter.

The review examiner's decision is affirmed in part, reversed in part. The claimant is denied benefits for the week beginning June 26, 2022, and for subsequent weeks, until such time as he meets the eligibility requirements under G.L. c. 151A.

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 10, 2024



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

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

¹ The claimant's testimony regarding the end date of his paternity leave, while not explicitly incorporated into the review examiner's findings, is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is 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).

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.

DY/rh