

**The claimant was working full-time for another employer. She was not entitled to unemployment benefits pursuant to G.L. c. 151A, §§ 29 and 1(r), because she already had a full-time weekly schedule of work, regardless of whether she only working part-time for the instant employer.**

**Board of Review  
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**Issue ID: 0079 8692 97**

### Introduction and Procedural History of this Appeal

The employer appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to award unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant filed a claim for unemployment benefits with the DUA with an effective date of April 16, 2023, which was approved in a determination issued on May 6, 2023. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the employer, the review examiner affirmed the agency's initial determination and awarded benefits in a decision rendered on June 8, 2023. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant was in partial unemployment and, thus, was not 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 employer's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant was in partial unemployment because she accepted all available work from this 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. The claimant works as a sales representative for the employer, an automobile dealer. The claimant began work for the employer in 2009. She works part-time and earns \$250.00 per day.
2. The claimant works for the employer on Saturdays. She does not work additional days because she has another full-time job.
3. The employer provides the claimant with all available work.

4. The claimant applied for unemployment benefits and was determined to have a benefit year beginning on April 16, 2023.
5. On May 6, 2023, the DUA sent the employer a Notice of Approval under Sections 29(a), 29(b), and 1(r) of the Law for the week beginning April 16, 2023, and indefinitely thereafter. The employer's appeal is from this Notice.

### 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. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant was entitled to unemployment benefits.

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.

The findings provide that the claimant worked only on Saturdays for the instant employer, because she had another job for a different employer, which was full-time. Finding of Fact # 2. Because the claimant was working full-time during her claim, she was not in total or partial unemployment within the meaning of G.L. c. 151A, § 1(r), as she already had a full-time weekly schedule of work. This is so regardless of whether she had only part-time hours for the instant employer.

We, therefore, conclude as a matter of law that the claimant was not in total or partial unemployment pursuant to G.L. c. 151A, §§ 29 and 1(r).

The review examiner's decision is reversed. The claimant is denied benefits for the week beginning April 16, 2023, and for subsequent weeks, until she meets the requirements of G.L. c. 151A.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - June 28, 2024**



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](http://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