

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 he had to sign a release of claims in order to receive the lump sum payment. The claimant's inability to provide the signed severance agreement does not render him ineligible for benefits, where he provided other documents from the employer showing he had to sign the release of claims to receive the severance payment.

**Board of Review
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Issue ID: 0080 0707 90

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 reverse.

The claimant separated from his position with the employer on April 28, 2023. He filed a claim for unemployment benefits with the DUA with an effective date of April 30, 2023, which was denied in a determination issued on May 23, 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 affirmed the agency's initial determination and denied benefits in a decision rendered on June 16, 2023. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant received remuneration pursuant to G.L. c. 151A, § 1(r)(3), and, thus, he was disqualified from receiving benefits 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 a \$12,064.00 lump sum severance payment was disqualifying remuneration, 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 full time as a senior sales consultant for the employer, a retail store, between October 2014 and April 28, 2023.
2. On April 28, 2023, the claimant was discharged due to a lack of work.

3. At the time of his separation, the claimant was earning \$1,600.00 per week in gross wages.
4. The claimant's separation from the employer was permanent but not the result of a plant closing within the meaning of Section 1(r)(3) of the Law.
5. The employer issued the claimant severance pay. This was a lump sum payment in the gross amount of \$12,064.00. This payment was the equivalent of seven (7) weeks' pay.
6. It is unknown if the claimant signed a release of claims for this lump sum payment.
7. The claimant received the lump sum on June 6, 2023.
8. In the fact-finding questionnaire the employer provided to the Department of Unemployment Assistance, the claimant responded to the question "Did you have to sign a release of claims to receive any part of the extra pay? (A release of claims is a document that says you will not sue the employer later and the employer will give you dismissal pay.)" by checking the box next to "No".

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. After such review, the Board adopts the review examiner's findings of fact except as follows. We reject Finding of Fact # 6, as unsupported by the record. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. As discussed more fully below, we reject the review examiner's legal conclusion that the claimant was not eligible for benefits.

To be eligible for unemployment benefits, the claimant must show that he 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.

The findings indicate that after the claimant was laid off on April 28, 2023, he did not perform any wage-earning services. *See* Finding of Fact # 4. He did, however, receive a \$12,064.00 payment equivalent to seven weeks of pay on June 6, 2023. Findings of Fact ## 5 and 7. The issue before the Board is whether this payment was remuneration. 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 are 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 \$12,064.00 paid to him as severance is not considered remuneration, and he meets the definition of being in total unemployment under G.L. c. 151A, § 1(r)(2).

The review examiner rejected that the claimant had to sign a release of claims in order to receive the severance package because he could not produce a copy of it, and he responded to a fact-finding questionnaire issued by the DUA that he did not sign a general release of claims. Such assessments are within the scope of the fact finder’s role, and, unless they are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. *See School Committee of Brockton v. Massachusetts Commission Against Discrimination*, 423 Mass. 7, 15 (1996). “The test is whether the finding is supported by ‘substantial evidence.’” Lycurgus v. Dir. of Division of Employment Security, 391 Mass. 623, 627 (1984) (citations omitted). “Substantial evidence is ‘such evidence as a reasonable mind might accept as adequate to support a conclusion,’ taking ‘into account whatever in the record detracts from its weight.’” *Id.* at 627–628, *quoting New Boston Garden Corp. v. Board of Assessors of Boston*, 383 Mass. 456, 466 (1981) (further citations omitted). Based on the documents in the record, we cannot accept the review examiner’s credibility assessment that he did not sign a release of claims. The claimant’s inability to provide the signed release of claims does not render him ineligible for unemployment benefits, where he was able to demonstrate through other documents that he had to sign a release of claims to be paid severance benefits.

Finding of Fact # 6 states that it is unknown whether the claimant signed a general release of claims to receive the severance payment. However, several documents submitted by the claimant during the hearing and entered into the record as Exhibit # 7 show that he had to sign a general release agreement to receive the severance payment. In Exhibit # 7, the document titled “[Employer] Severance Plan and Summary Plan Description, Restatement Effective January 31, 2023” states on page 5, “[the] agreement the [employee] must sign will contain a comprehensive release of claims relating to the [employee’s] employment and termination . . .”. Furthermore, the document

titled “[Employer] Employment Separation and Severance Packet” reiterates “[to] receive your severance pay you must read, sign and return the SGRA [Separation General Release Agreement] in the defined period.” Finally, the document titled “Employment Separation: Severance and Benefits FAQ” also asserts on page 6 that if an employee chooses not to sign the SGRA, the employee will not receive severance benefits under the severance plan.¹

Inasmuch as the record shows that the claimant had to sign a release of claims as consideration for the \$12,064.00 lump sum payment, it is not treated as remuneration.

We, therefore, conclude as a matter of law that that the claimant’s lump sum severance payment is not remuneration within the meaning of G.L. c. 151A, § 1(r)(3). We further conclude that the claimant was in total unemployment within the meaning of G.L. c. 151A, §§ 29 and 1(r)(2).

The review examiner’s decision is reversed. The claimant is entitled to receive benefits for the period beginning April 30, 2023, through June 17, 2023, if otherwise eligible.²

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 26, 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 These severance documents entered as Exhibit # 7, while not explicitly incorporated into the review examiner’s findings, 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 claimant’s benefit year was initially extended pursuant to G.L. c. 151A, § 1(c), by the number of weeks he was disqualified due to the severance payment. Since he is now entitled to benefits during this period, the claimant’s benefit year will not be extended, and his benefit year will end on April 27, 2024.

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