

The claimant was not paid a commission for work performed during his base period until after the effective date of his claim. Therefore, that commission may not be used in calculating his monetary eligibility for benefits. Pursuant to G.L. c. 151A, § 24(a), the claimant was not monetarily eligible for benefits based solely upon wages paid to him in his primary or his alternate base period.

**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: 0080 9054 43

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 affirm.

The claimant filed a claim for unemployment benefits with the DUA, effective July 23, 2023, which was denied in a determination issued on July 27, 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 the agency's initial determination and denied benefits in a decision rendered on September 7, 2023. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant did not have sufficient wages in his primary base period to meet the eligibility requirements under G.L. c. 151A, §§ 24(a) and 1(a). 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 earnings during the period immediately preceding the effective date of his claim. The claimant attended the remand hearing. Thereafter, the review examiner issued her 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 monetarily eligible for an unemployment claim based on his base period earnings, 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 filed a claim for unemployment benefits with an effective date of July 23, 2023.

2. During the base period, the claimant worked for one employer. The base period is from July 1, 2022, through June 30, 2023. The claimant was not paid any wages during the first three quarters of the base period. During the fourth quarter, April 1, 2023 – June 30, 2023, the claimant was paid gross wages totaling \$28,580.74.
3. On July 27, 2023, the Department of Unemployment Assistance notified the claimant that he did not have sufficient wages on file to establish a Massachusetts unemployment claim for benefits.
4. On July 31, 2023, the employer paid the claimant commission, \$12,750.00, for work he had completed in June 2023.
5. The claimant's gross earnings during the period between July 1, 2023, and July 22, 2023, was [sic] \$12,750.00.

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. We further agree with the review examiner's legal conclusion that the claimant is not monetarily eligible for benefits.

G.L. c. 151A, § 24, provides, in pertinent part, as follows:

An individual, in order to be eligible for benefits under this chapter, shall—

(a) Have been paid wages in the base period amounting to at least thirty times the weekly benefit rate; provided, however, that for the period beginning on January first, nineteen hundred and ninety-five the individual has been paid wages of at least two thousand dollars during said base period; provided, further, that said amount shall be increased annually proportionately, rounding to the nearest hundred dollars, to any increases which have occurred during the prior calendar year in the minimum wage

To be monetarily eligible for a claim under this statute at the time the claimant filed for unemployment benefits, he must have been paid wages of at least \$6,000.00 in the base period.¹ He must also have been paid wages during his base period which amount to 30 times his weekly benefit rate.

G.L. c. 151A, § 1(a), defines base period, in relevant part, as follows:

¹ G.L. c. 151A, § 24(a), states that a claimant must have earned \$2,000.00 in the base period. However, this amount has been changed, as required under the statute, based on changes to the minimum wage. For a claim effective January 1, 2023, the minimum amount of base period wages needed for a valid unemployment claim was \$6,000.00.

“Base period”, the last four completed calendar quarters immediately preceding the first day of an individual’s benefit year; provided, however that if an individual as a result of the above provision does not meet the requirement of clause (a) of section twenty-four, or has reason to believe that he would be eligible for an increase of ten percent or more in his total benefit credit as defined in subsection (a) of section thirty, if his base period was calculated using the last three completed calendar quarters and any weeks in which wages were paid to the individual during the incomplete calendar quarter in which the individual files a claim, . . . then the term “base period” shall mean the last three completed calendar quarters and any weeks in which wages were paid to the individual in the incomplete calendar quarter in which the individual files a claim for benefits; provided, further, that if a claimant received weekly compensation for temporary total disability under the provisions of chapter one hundred and fifty-two . . . for more than seven weeks within the base period, as heretofore defined, his base period shall be lengthened by the number of such weeks, but not to exceed fifty-two weeks, for which he received such payments

The claimant’s primary base period for his 2023-01 claim, which includes the last four completed calendar quarters prior to the effective date of his claim, ran from July 1, 2022, through June 30, 2023. In these four quarters of his primary base period, the claimant was only paid gross wages of \$28,580.74 during the second quarter of 2023. Consolidated Finding # 2. On appeal, however, the claimant presented evidence indicating that he may have been paid additional wages during weeks prior to filing his claim.

Pursuant to G.L. c 151A, § 1(a), a claimant who does not have sufficient base period wages during his primary base period may still be monetarily eligible for benefits if he can show he has sufficient wages during his alternate base period. The alternate base period includes the incomplete calendar quarter in which the claimant filed his claim, in this case the weeks between July 1, 2023, and July 22, 2023, and three completed calendar quarters immediately preceding those weeks. Accordingly, the claimant’s alternate base period ran from October 1, 2022, through July 22, 2023.

When determining what wages may be considered for monetary eligibility, the Supreme Judicial Court (SJC) has explained that the language of G.L. c. 151A and its associated regulations are clear as to how employers should report wages. Naples v. Comm’r of Department of Employment and Training, 412 Mass. 631, 634 (1992). The SJC held that “the Legislature intended that employers must report wages in the quarter in which they are ‘paid,’ . . . and that ‘average weekly wage’ includes those wages ‘paid’ to an employee in an appropriate quarter.” Id. In assessing a claimant’s monetary eligibility for benefits, the DUA must, therefore, attribute any wages to the period in which they were *actually paid* to the claimant.

At the remand hearing, the claimant provided evidence that he was paid commission totaling \$12,750.00 on July 31, 2023. Consolidated Finding # 4. While the claimant received this remuneration for work he performed in June, 2023, he was not paid until after the effective date of his claim. Consolidated Findings ## 1 and 4. Therefore, including this additional commission payment in the claimant’s base period wages is not authorized by Chapter 151A, as the definition of alternate base period does not include wages paid after the effective date of a claim.

Pursuant to G.L. c. 151A, § 29(a), a claimant's weekly benefit amount equals fifty per cent of his or her average weekly wage during the quarter in which he or she earned the most wages. In both his primary and alternate base period, the claimant was only paid wages during the second quarter of 2023. The claimant's gross pay of \$28,580.74 during that quarter equates to an average weekly wage of \$2,199 (rounded to the nearest dollar). Half of the claimant's weekly earnings equals \$1,100 (rounded to the nearest dollar), and thirty times that amount is \$33,000. As the claimant was paid only \$28,580.74 in both his primary and his alternate base period, he did not meet the threshold for monetary eligibility under G.L. c. 151A, § 24(a).

We, therefore, conclude as a matter of law that the claimant is not monetarily eligible for an unemployment claim using either his primary or alternate base period pursuant to G.L. c 151A, §§ 1(a) and 24(a).

The review examiner's decision is affirmed. The claimant is not monetarily eligible for an unemployment claim effective July 23, 2023.

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 10, 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

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