

The claimant, a banquet server, had her full-time hours reduced by the employer due to lack of available work. She was in partial unemployment under G.L. c. 151A, §§ 29 and 1(r), during two weeks when she worked less than a full-time schedule and earned less than her weekly benefit amount plus earnings disregard. When the claimant went on a paid leave of absence, she was not in total unemployment because she was receiving remuneration.

Board of Review
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Issue ID: 334-FHJ4-5356

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 23, 2024, which was approved in a determination issued on April 29, 2025. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the employer, the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on July 4, 2025. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not in 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, the DUA's electronic database system, 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 partial unemployment because either she failed to report her earnings accurately, did not accept all hours available to her, or had earnings that exceeded her benefit rate plus earnings disregard, 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 filed a claim for unemployment benefits on July 6, 2024, with an effective date of June 23, 2024. The Department of Unemployment Assistance (DUA) determined the claimant's weekly benefit amount to be \$1,033.00 with an earnings disregard of \$344.[33].

2. The claimant is a part time banquet server for the instant employer, a hotel. The claimant earns \$15.00 per hour plus tips.
3. Wages have been reported to the DUA for the claimant in Quarter 1 of 2025 from the instant employer, a second employer (Employer A) and a third employer (Employer B). A fourth employer (Employer C) did not report any earnings for the claimant in 2025 Q/1.
4. The instant employer is the primary employer on the claimant's UI claim.
5. For week ending March 15, 2025, the claimant worked 13.25 hours for the instant employer and had total gross earnings (wages and tips) of \$1,359.52.
6. On her weekly certification for week ending March 15, 2025, the claimant reported she had gross earnings of \$650.00.
7. For week ending March 22, 2025, the claimant worked 15.75 hours for the instant employer and had total gross earnings (wages and tips) of \$1,252.73.
8. On her weekly certification for week ending March 22, 2025, the claimant reported she had gross earnings of \$450.00.
9. For week ending March 29, 2025, the claimant worked 27.98 hours for the instant employer and had total gross earnings (wages and tips) of \$3,008.69.
10. On her weekly certification for week ending March 29, 2025, the claimant reported she had gross earnings of \$778.00.
11. On April 4, 2025, the claimant began a Paid Family Medical Leave ("PFML") from the instant employer. The PFML was approved to May 22, 2025.
12. For week ending April 5, 2025, the claimant worked 17 hours for the instant employer and had total gross earnings (wages and tips) of \$1,422.44.
13. On her weekly certification for week ending April 5, 2025, the claimant reported she had gross earnings of \$450.00.
14. For week ending April 12, 2025, the claimant used 16 hours of vacation time from the instant employer and had total gross earnings of \$560.00.
15. On her weekly certification for week ending April 12, 2025, the claimant reported she had gross earnings of \$150.00.
16. For week ending April 19, 2025, the claimant did not work for the instant employer.

17. On her weekly certification for week ending April 19, 2025, the claimant reported she had gross earnings of \$150.00.
18. The employer has not reduced the claimant's hours.
19. The claimant requested and was approved for a leave of absence.
20. The claimant has not certified for benefits on this claim after week ending April 19, 2025.
21. On June 29, 2025, the claimant filed a new claim for benefits with an effective date of June 22, 2025.

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 the portion of Finding of Fact # 2, which states that the claimant worked part-time as the record reflects that she was a full-time employee whose hours were reduced by the employer due to lack of work. We also reject Finding of Fact # 18, as this is not supported by the record.¹ In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant was not in partial unemployment for some of the weeks in question.

On appeal, the claimant asserts that the overpayment generated as a result of the review examiner's decision was improper because her hours were reduced by the employer due to the lack of work during the winter months, and that she was eligible for partial benefits for three weeks in March, prior to going on a paid leave of absence that began on April 4, 2025.

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

¹ The employer's witness, the Assistant Director of Human Resources, testified that the claimant was hired as a full-time banquet server and that the claimant's hours were reduced by the employer to part-time hours in February, 2025, because business was slow during the winter months. Her testimony in this regard is consistent with the employer's and the claimant's responses to DUA Fact Finding Questionnaires dated March 11, 2025, which both state that the claimant's full-time schedule was reduced to part-time hours due to reduced business levels and are marked as Exhibits ## 2 and 4. While the parties responses and the employer's witness testimony regarding the reduction in the claimant's hours by the employer due to lack of available work are not explicitly incorporated into the review examiner's findings, they are part of the unchallenged evidence introduced at the hearing and placed in the record, and they are 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).

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; provided, however, that certain earnings as specified in paragraph (b) of section twenty-nine shall be disregarded. . . .

(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.

Pursuant to these provisions, claimants are only eligible for benefits if they are physically capable of, available for, and actively seeking full-time work, and they may not turn down suitable work.

The claimant earned \$15.00 per hour plus tips. *See* Finding of Fact # 2. During the week of March 9, 2025, the claimant worked 13.25 hours and reported part-time gross earnings in the amount of \$650.00 in her weekly certification. However, the actual total gross wages including tips were \$1,359.92. *See* Finding of Fact ## 5 and 6. She also underreported her earnings during the week of March 16, 2025, reporting \$450.00 in gross earnings for 15.75 hours of work. However, the actual gross earnings, including tips for the week of March 16th, were \$1,252.73. *See* Findings of Fact ## 7 and 8. In each of these weeks, the claimant worked less than a full-time schedule and she earned less than her weekly benefit amount (\$1,033.00) plus earnings disregard (\$344.33). *See* Finding of Fact # 1. Since the employer reduced the claimant’s full-time schedule to part-time, beginning sometime in February, 2025, and there is no indication in the record that she was refusing work from the employer for these weeks, she was in partial unemployment pursuant to G.L. c. 151A, §§ 29(b) and 1(r)(1), during the period beginning March 9, 2025, through week ending March 22, 2025.

However, we disagree with the claimant’s assertion that she is entitled to partial benefits for the weeks beginning March 23, 2025, and March 30, 2025. During the week of March 23, 2025, the claimant reported gross earnings in the amount of \$778.00 for 27.98 hours worked. However, the actual total gross wages including tips were \$3,008.69. *See* Findings of Fact ## 9 and 10. During the week of March 30, 2025, the claimant worked 17 hours and reported gross earnings in the amount of \$450.00. Yet, the actual gross earnings including tips were \$1,422.44. *See* Findings of Fact ## 12 and 13. Inasmuch as her weekly wages exceeded \$1,377.33 (her weekly benefit amount plus earnings disregard), she was neither in total nor partial unemployment during these weeks.

The findings also show that the claimant was approved for a paid medical leave of absence by the employer. Her paid leave began on April 4, 2025, and was approved to May 22, 2025. *See* Findings of Fact ## 11 and 19. Because the employer paid the claimant her average weekly wages during her leave of absence and nothing in the record suggests that she was able and available to perform any type of work, she was not in unemployment within the meaning of G.L. c. 151A, §§ 29(a) and 1(r), beginning the week of April 6, 2025.

We, therefore, conclude as a matter of law that the claimant was in partial unemployment within the meaning of G.L. c. 151A, §§ 29 and 1(r), from the week beginning March 9, 2025, through March 22, 2025. We further conclude the claimant has not met her burden to show that she was in unemployment pursuant to the same sections of law as of March 23, 2025.

The review examiner's decision is affirmed in part and reversed in part. The claimant is entitled to partial benefits for the week beginning March 9, 2025, to March 22, 2025, if otherwise eligible. She is denied benefits for the week of March 23, 2025, and for subsequent weeks, until such time as she meets the requirements of G.L. c. 151A.

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 20, 2025



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

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