

**The claimant was in partial unemployment during weeks when she worked part-time, earned wages less than her weekly benefit amount, and was otherwise capable of and available for work. She was not in unemployment during the weeks when she was hospitalized and not medically cleared to work. Nor was she entitled to illness weeks during this period because suitable work was available to her, and she was not available for any work after separating from her employment.**

**Board of Review  
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Member  
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Member**

**Issue ID: 334-FHJN-PDD7**

### Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to award the claimant partial benefits during the period between December 2, 2024, and January 11, 2025. 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 September 22, 2024, and was awarded partial benefits in a determination issued on March 5, 2025. 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, awarding the claimant partial benefits during the period between December 2, 2024, and January 11, 2025, but finding that the claimant was subject to a lost time charge during the week of January 12, 2025, in a decision rendered on June 14, 2025. We accepted the claimant's application for review.

Benefits were awarded after the review examiner determined that the claimant was in partial unemployment during the weeks of December 2, 2024, through January 18, 2025, and, thus, was not disqualified under G.L. c. 151A, §§ 29 and 1(r). 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 unemployment status during the week of January 12, 2025. Only 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 in partial unemployment during the weeks between December 2, 2024, and January 11, 2025, but was subject to a lost time charge of \$872 for the week of January 12, 2025, because she did not work her scheduled hours that week due to illness, 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 worked for the [Employer A] for over 30 years when it closed.
2. The claimant filed her claim for unemployment benefits on September 26, 2024. The effective date of the claim is September 22, 2024. The claimant's weekly benefit rate is \$882. The claimant's earnings disregard is \$294.
3. The claimant was aware that she was required to report if she had worked and had any earnings when certifying for unemployment benefits.
4. On November 18, 2024, the claimant began working for the employer [Employer B]. The claimant was working as an Emergency Department Case Manager RN. The claimant was working 16 hours per week. The claimant was being paid \$54.50 per hour.
5. The claimant was scheduled to work two days per week. The claimant worked an 8-hour shift. The claimant was paid by the employer on a bi-weekly basis.
6. The claimant worked for a three-week period before she received her first payment from the employer. The claimant recorded the hours that she believed she had worked in each of those initial weeks.
7. The employer paystubs did not indicate the hours worked in each week, only providing the total hours worked for a two-week period.
8. The paystub for the period from November 17, 2024, through November 30, 2024, indicates the claimant worked 35.50 hours at a rate of \$54.50 per hour. The gross wages paid were \$1,934.77.
9. The week of December 1, 2024, through December 7, 2024, the claimant worked 16 hours. The claimant reported her gross earnings as \$872.
10. The week of December 8, 2024, through December 14, 2024, the claimant worked 16 hours. The claimant reported her gross earnings as \$872.
11. The paystub for the period from December 1, 2024, through December 14, 2024, indicates the claimant worked 32.25 hours at a rate of \$54.50 per hour. The gross wages paid were \$1,757.64.
12. The week of December 15, 2024, through December 21, 2024, the claimant worked 16 hours. The claimant reported her gross earnings as \$872.
13. The week of December 22, 2024, through December 28, 2024, the claimant worked 17 hours. The claimant reported her gross earnings as \$925.50.

14. The paystub for the period from December 15, 2024, through December 28, 2024, indicates the claimant worked 33.25 hours at a rate of \$54.50 per hour. The gross wages paid were \$1,812.13.
15. The week of December 29, 2024, through January 4, 2025, the claimant worked 16 hours. The claimant reported her gross earnings as \$872.
16. The week of January 5, 2025, through January 11, 2025, the claimant worked 16 hours. The claimant reported her gross earnings as \$872.
17. The paystub for the period from December 29, 2024, through January 11, 2025, indicates the claimant worked 33.25 hours (29.75 hours with .75 as a holiday). The gross wages paid were \$1,641.82.
18. The claimant was hospitalized on January 8, 2025, due to Pulmonary Hypertension and COPD. The claimant was released from the hospital on January 13, 2025.
19. During the week of January 12, 2025, through January 18, 2025, the claimant was scheduled to work two days for the employer, January 15, 2025 (8:00 a.m. to 4:30 p.m.) and January 16, 2025 (8:00 a.m. to 4:30 p.m.).
20. The claimant called out sick from work for both of her scheduled days during the week of January 12, 2025, through January 18, 2025, totaling 16 hours of work. The claimant did not work any of her scheduled hours during that week.
21. The claimant was unable to work during the entire week of January 12, 2025, through January 18, 2025, due to her illness. The claimant was suffering with Pulmonary Hypertension and COPD.
22. During the week of January 12, 2025, through January 18, 2025, the claimant had not obtained medical clearance to return to work after being hospitalized.
23. The claimant certified for unemployment benefits for the period beginning November 17, 2024, through January 18, 2025, while working for the instant employer.
24. The claimant separated from employment with the instant employer effective January 20, 2025.
25. The claimant was first cleared by her doctor to return to work the week beginning January 26, 2025. The claimant could return to work at that time as long as she was able to carry and have oxygen continuously. (As a Nurse Case Manager in the Emergency Department, the claimant had to meet with patients throughout the day and was unable to carry her oxygen.)

26. On March 5, 2025, a Notice of Disqualification was issued under Section 29(b) and 1(r) of the Law, indicating “You failed to accurately report your gross earnings for the week in which you worked. You are entitled to partial benefits for any week in which you are employed less than a full-time schedule of hours and earn less than your allowable amount. You are entitled to partial benefits for the following week(s) 12/2/2024 and 12/30/2024.” “You are eligible to receive partial benefits for any week in which your employment is less than a full-time schedule of hours and your gross earnings are less than your allowable amount which is \$882.00 + \$294.00.” “Because you knew, or should have known, the earnings must be reported when you claimed benefits; the overpayment is due to fault/fraud on your part.” “This determination results in an overpayment of unemployment benefits in the total amount of \$1,186.00.” It indicates an overpayment for the week ending 12/7/2024 in the amount of \$304.00 and the week ending 1/18/2025 in the amount of \$882.00. The claimant filed an appeal to that determination.

### 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. After such review, the Board adopts the review examiner’s consolidated findings of fact except as follows. We reject the portion of Consolidated Finding # 26 that addresses the status of the claimant’s overpayment, beginning with the words “[b]ecause you knew or should have known . . .”, as inaccurate based on a review of the claimant’s profile in the DUA’s recordkeeping database and the other Consolidated Findings relating to the claimant’s earnings. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. Further, while we believe that the review examiner’s consolidated findings of fact support the conclusion that the claimant was in partial unemployment for the majority of the period on appeal, we believe that the review examiner erred in subjecting the claimant to a lost time charge for the week of January 12, 2025.

G.L. c. 151A, § 29, authorizes benefits be paid only to those in “total unemployment” or “partial unemployment.” Total unemployment is defined at G.L. c. 151A, § 1(r)(2), and provides, in relevant part, as follows:

“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.

Generally, a person must be able and available for full-time work in order to receive unemployment benefits. However, the statute and DUA policy allow for certain situations in which a person may still receive benefits, even if she is unavailable for work on a day or two in a given week. G.L. c. 151A, § 1(r)(1), the provision allowing benefits to claimants in partial unemployment, provides, in relevant part:

“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; . . . For the purpose of this subsection, any loss of remuneration incurred by an individual during said week resulting from any cause other than failure of his employer to furnish full-time weekly schedule of work shall be considered as wages and the director may prescribe the manner in which the total amount of such wages thus lost shall be redetermined.

This statutory provision is further explained by 430 CMR 4.04(6), which states:

The cash value of time lost for reasons other than failure to furnish full-time work shall be determined by multiplying the average hourly earnings for the week by the number of hours lost. If it is not possible to ascertain the average hourly earnings for the week of such "lost time", such lost earnings shall be computed at four percent of the benefit rate for each hour lost.

The DUA has expanded the idea of lost time beyond the confines of a claimant in partial unemployment. In the DUA Adjudication Handbook, Chapter 4, Section 3(4), the DUA’s policy is as follows:

A claimant who is not able or available to work for **fewer than three days** during a week may be subject to a lost-time charge based on the amount of time the claimant was not available for and able to work. . . .

A claimant who refuses an offer of short-term employment because of unavailability or an inability to work may be subject to a lost-time charge based on the earnings the claimant could have received from that job. . . .

Lost-time charges are calculated by multiplying the average hourly earnings for the week by the number of hours lost. In general, eight hours of lost-time should be charged for each day the claimant was not in compliance with § 24(b). If the claimant ordinarily worked **part-time**, charge lost time for the number of hours the claimant ordinarily would be available to work each day.

(Emphasis in original.)

The claimant worked part-time for the instant employer during the seven-week period between November 17, 2024, and January 11, 2025. *See Consolidated Finding # 5.* Absent any indication that the claimant had any limitations on her capability or availability for full-time work during this period, she was in partial unemployment during any week she earned gross wages less than \$1,176.00, which is the sum of her weekly benefit amount (\$882.00) plus her earnings disregard (\$294.00). *See Consolidated Findings ## 2, 4, and 5.* In any week in which she earned wages exceeding that total amount, she was not eligible for benefits.

The claimant reported she was hired to work two eight-hour shifts each week, or a total of 32 hours during each bi-weekly pay period. Consolidated Finding # 4. However, her paystubs for the period between November 17, 2024, and January 4, 2025, show that she worked more than 32 hours during each pay period. *See Consolidated Findings ## 8, 11, 14, and 17.* The claimant was unable to provide specific evidence as to the number of hours she worked in each of the weeks at issue. Without more accurate information, we must attribute these wages based upon the best information available. Because the claimant testified to having a consistent part-time schedule, we attribute half of the claimant's bi-weekly paycheck to each of the two weeks covered by that pay period.

In summary, the claimant's earnings for the weeks between November 17, 2024, and January 11, 2025, are:

For the week of November 17, 2024: \$976.38

For the week of November 24, 2024: \$976.38

For the week of December 1, 2024: \$ 878.82

For the week of December 8, 2024: \$ 878.82

For the week of December 15, 2024: \$906.05

For the week of December 22, 2024: \$906.05

For the week of December 29, 2024: \$820.91

As the claimant's gross earnings during each of these weeks were less than \$1,176.00, the claimant was in partial unemployment during the seven-week period between November 17, 2024, and December 4, 2025. However, the claimant was no longer capable of work for the period between January 8, 2025, and January 25, 2025. *See Consolidated Findings ## 18, 21, and 25.* Thus, her unemployment status beginning the week of January 5, 2025, requires further analysis.

Because the claimant was hospitalized on January 8, 2025, we can reasonably infer that the claimant was not available for work for three days during the week of January 5, 2025. Therefore, pursuant to the DUA's lost time policy, the claimant is subject to a full disqualification rather than a lost time charge. Further, as work was available to her during that week, she is also not entitled to payment for an illness week under G.L. c. 151A, § 24(c).<sup>1</sup>

In her initial decision, the review examiner concluded that the claimant was subject to a lost time charge of \$872 for the week of January 12, 2025, because she was ill and was unable to work her two scheduled shifts. On remand, the consolidated findings show the claimant did not work her two shifts during that week because she was unable to work at all during that week. Consolidated Findings ## 21 and 22. Because suitable work was available to the claimant during that week, she is also not entitled to payment for an illness week pursuant to G.L. c. 151A, § 24(c). Therefore, the claimant was not in unemployment during the week of January 12, 2025, and was not eligible for benefits.

Because the claimant remained unable to work through January 25, 2025, she was not in total or partial unemployment during the week beginning January 19, 2025. *See Consolidated Findings ## 22 and 25.* She is also not entitled to payment for an illness week under G.L. c. 151A, § 24(c).

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<sup>1</sup> "No individual shall be considered ineligible for benefits because of failure to comply with the provisions of said clause (b) if such failure is due to an illness or disability . . . provided, that no work which would have been considered suitable but for such illness or disability was offered to him after he became ill or disabled . . . ."

Pursuant to 20 CFR § 604.4(b), a claimant is only eligible for an illness week if she “has previously demonstrated . . . ability to work and availability for work *following the most recent separation from employment . . .*” (emphasis added). Since the claimant separated from work on January 20, 2025, and was not cleared to work until the week of January 26, 2025, she did not show she was capable of work in the week of her separation.

We, therefore, conclude as a matter of law that the claimant was in partial unemployment during the period between November 17, 2024, and January 4, 2025, pursuant to G.L. c. 151A, §§ 29(b) and 1(r)(2). We further conclude that the claimant was not in total or partial unemployment during the period between January 5, 2025, and January 25, 2025.

The review examiner’s decision is affirmed in part and reversed in part. The claimant is entitled to partial benefits for the weeks of November 17, 2024, through January 4, 2025, if otherwise eligible. The claimant is denied benefits for the weeks of January 5, 2025, through January 25, 2025.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - September 23, 2025**



Charlene A. Stawicki, Esq.  
Member



Michael J. Albano  
Member

**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.

LSW/rh