

The claimant's base period services did not affect his eligibility for, or increase the amount of, his pension. Therefore, his weekly benefit will not be reduced by his pension payments pursuant to G.L. c. 151A, § 29(d)(6).

**Board of Review
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Issue ID: 352-MNFD-6M53

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 filed his 2025-01 claim for unemployment benefits with the DUA, effective June 8, 2025. On July 21, 2025, the DUA issued a determination under G.L. c. 151A § 29(d)(6), which stated that his weekly benefit rate would be reduced by one half of his employer funded retirement benefit beginning the week ending July 5, 2025. 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 August 23, 2025. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant's pension was maintained by the employer, and, thus, one half of the pension would be deducted from his weekly benefit amount, as required by G.L. c. 151A, § 29(d)(6). 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 one half of the claimant's pension payment had to be deducted from his weekly benefit amount because the pension was maintained by his 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 filed an initial claim for unemployment benefits effective June 8, 2025.
2. The claimant worked full-time as a manager for a personal care business from June 4, 1979, until he separated on June 6, 2025.

3. From 1979 until December 31, 2007, the claimant and the employer made contributions to a pension fund maintained by the employer.
4. In 2005, the employer was purchased by a large corporation (corporation). The claimant continued to be employed by the corporation.
5. The employer's pension fund was frozen by the corporation on December 31, 2007, meaning no contributions would be made to the fund by either the employer or the claimant after December 31, 2007.
6. The corporation administers the retirement plan and pays the full cost of same by making contributions to a trust fund.
7. In April, 2025, the corporation eliminated the claimant's position effective June 6, 2025.
8. The claimant was provided with retirement paperwork and a separation agreement.
9. The claimant is receiving monthly retirement benefits in the amount of \$5,954.28, beginning on August 1, 2025, and continuing until June 30, 2026. Beginning July 1, 2026, the claimant will receive monthly retirement benefits in the amount of \$4,722.78.
10. The calculation of the claimant's retirement benefits was based solely on his years of service to the employer from June 4, 1979, to December 31, 2007.
11. The claimant's earnings in the base period of his claim (April 1, 2024, to March 31, 2025) were not used to calculate his retirement benefits.

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 is subject to a partial reduction of his weekly benefit amount based on his receipt of an employer pension.

G.L. c. 151A, § 29(d)(6), mandates that a claimant's weekly benefit rate be reduced if he is receiving a pension under certain circumstances. Specifically, the statute provides, in relevant part, as follows:

- (d) An individual in unemployment and otherwise eligible for benefits, who is receiving, has received, or will receive payments in the form of retirement benefits,

any part of which was financed by a base period employer, shall be paid for each week of unemployment an amount computed as follows:

(6) Notwithstanding any of the foregoing provisions of this subsection, the amount of benefits otherwise payable to an individual for any week which begins in a period with respect to which such individual is receiving governmental or other pension . . . shall be reduced by an amount equal to the amount of such pension . . . which is reasonably attributable to such week; provided, further, that . . . such reduction shall apply only if a base period employer contributed to or maintained such pension . . . and . . . services of the individual for such employer *during the base period* affected eligibility for or increased the amount of such pension . . . and provided further, that if the individual contributed to such plan, the amount of benefits otherwise payable to such individual shall be reduced by fifty percent of the amount of such pension

(Emphasis added).

Pursuant to this statute, in order for the agency to apply a full or partial pension deduction, certain conditions must be met. The reduction applies only if the base period employer contributed to or maintains the pension, and if the services performed by the claimant during the based period affected eligibility for or increased the amount of the pension.

In this case, the claimant's employer did not contribute to his pension during the base period of his claim, but it did maintain the pension. Findings of Fact ## 5–6. The review examiner concluded that, because the employer maintained the pension, and both the claimant and the employer contributed to the pension in the past, the claimant's weekly benefit amount was subject to a deduction of fifty percent of his pension amount. Findings of Fact ## 3 and 6. We disagree with this conclusion, as the review examiner does not take into account the portion of G.L. c. 151A, § 29(d)(6), which states that, for a reduction in benefits to apply, the services performed by the claimant during the base period must have affected his eligibility for or increased the amount of his pension.

Here, there is no indication in the record that the services performed by the claimant during the base period affected his eligibility for or increased the amount of his pension. The review examiner found that the claimant's pension amount was based solely on his years of service between 1979 and 2007, and his earnings during the base period were not used to calculate the amount of his pension. Findings of Fact ## 10–11.¹ Thus, because one of the requirements for a benefit reduction

¹ We note that based on the information contained in Exhibit 12, "The [Employer] Retirement Program Summary Plan Description," regarding the formulas used by the employer to calculate the pension amount, it is possible that a portion of the claimant's years of service after 2007 were taken into account when calculating his pension amount. However, these formulas use an employee's age and years of service when calculating the pension amount, and, based on the information in the DUA's record-keeping system pertaining to the claimant's age, and the information in the record pertaining to his years of service for the employer, it does not appear that his service during the base period of his 2025-01 claim affected his eligibility for his pension or his pension amount. While not explicitly incorporated into the review examiner's findings, Exhibit 12 is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is 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).

set forth in the statute has not been established, the claimant's weekly benefit amount is not reduced by fifty percent of his pension amount under this claim.

We, therefore, conclude as a matter of law that the claimant is not subject to a pension deduction pursuant to the provisions of G.L. c. 151A, § 29(d)(6), for benefits paid under his 2025-01 claim.

The review examiner's decision is reversed. The claimant is entitled to his full weekly benefit amount, beginning June 8, 2025, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 20, 2025



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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

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.

SVL/rh