



THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
BOARD OF REVIEW

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BOARD OF REVIEW DECISION

BR-110549 (Jan. 27, 2010) -- The Massachusetts unemployment statute limits monetary eligibility for extended benefits to 40 times the most recent benefit amount or 1 1/2 times the highest quarterly wages. Without legislative action, DUA is without authority to extend benefits to a claimant who does not meet either test.

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Division of Unemployment Assistance (DUA) to deny the claimant extended unemployment benefits following the exhaustion of his regular unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On April 23, 2009, the agency initially determined that the claimant was not entitled to receive extended unemployment benefits. The claimant appealed and attended a hearing on the merits. In a decision rendered on July 7, 2009, the review examiner affirmed the agency determination, concluding that the claimant did not have sufficient base period earnings to be eligible for such benefits under G.L. c. 151A, § 30A.

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 on appeal is whether the agency is obligated to consider whether the claimant had twenty weeks of insured, full-time employment during the base period as an alternative method for measuring eligibility for extended benefits.

Findings of Fact

The review examiner's findings of fact and credibility assessments are set forth below in their entirety.

1. The claimant filed a claim for unemployment benefits on January 10, 2009. The effective date of the claim is January 4, 2009, and the benefit year end date is January 2, 2010.
2. The Primary Base Period of this claim is the period from January 1, 2008 through December 31, 2008. An initial determination concluded that claimant's Primary Base Period wages totaled \$13,018.32.
3. The claimant's weekly unemployment benefit amount was established to be \$342. No dependency allowance is applicable to this claim. The claimant's Primary Base Period Benefit Credit was established to be \$4,686.
4. The claimant exhausted all rights to regular unemployment insurance payments.
5. From January 1, 2008 through March 31, 2008, the claimant was not paid any wages.
6. From April 1, 2008 through June 30, 2008, the claimant was paid wages in the amount of \$4,130.58.
7. From July 1, 2008 through September 30, 2008, the claimant was paid wages in the amount of \$8,887.74.
8. From October 1, 2008 through December 31, 2008, the claimant was not paid any wages.
9. On April 23, 2009, the claimant filed a claim for extended unemployment benefits. The Division of Unemployment Assistance ("DUA") determined the claimant's Base Period wages did not meet the monetary requirement.

Ruling of the Board

The Board adopts the review examiner's findings of fact. In so doing, we deem them to be supported by substantial and credible evidence. However, we reach our own conclusions of law, as are discussed below.

On appeal, the claimant's counsel argues that federal and state law mandate that DUA consider whether the claimant had worked twenty weeks of full-time insured employment during the base period as a third way of measuring monetary eligibility for extended benefits under G.L. c. 151A, § 30A(3)(a)(3).

The relevant portion of G.L. c. 151A, § 30A (3)(a) is as follows:

An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the commissioner finds that with respect to such week: . . . (3) said individual has had twenty weeks of full time insured employment, or the equivalent in insured wages. For the purpose of this subsection, insured wages are wages paid during the base period of the current benefit year in an amount which exceeds forty times the most recent weekly benefit amount or one and one-half times the wages of the individual's highest quarterly earnings. The commissioner shall prescribe by regulation *which of the foregoing methods* of measuring employment and earnings *shall be used* to effectuate the purposes of this chapter and to provide the greatest coverage to individuals in need of extended benefits. (Emphasis added.)

The corresponding DUA regulation is 430 CMR 4.01, which provides, in pertinent part, as follows:

(7) Extended Benefits. To be eligible to receive extended benefits with respect to any week of unemployment in the individual's eligibility period, the individual must have been paid wages during the base period of the current benefit year in an amount which exceeds 1 ½ times the wages of the individual's highest quarterly earnings or 40 times the most recent weekly benefit amount including dependency benefits.

The DUA has chosen to measure monetary eligibility based only upon the latter two methods, i.e., a minimum of forty times a claimant's most recent regular unemployment weekly benefit amount or at least one and one-half of a claimant's highest quarterly earnings.

Section 30A(3)(a)(3) mirrors the language in the Federal-State Extended Unemployment Compensation Act of 1970 (FSEUCA), as amended. 26 U.S.C. § 3304(a)(11), note. Section 202(a)(5) of FSEUCA provides, in relevant part, as follows:

[A]n individual shall not be eligible for extended compensation unless, in the base period with respect to which the individual exhausted all rights to regular compensation under the State law, the individual had 20 weeks of full-time insured employment, or the equivalent in insured wages. For purposes of this paragraph, the equivalent in insured wages shall be earnings covered by the State law for compensation purposes which exceed 40 times the individual's most recent weekly benefit amount or 1 ½ times the individual's insured wages in that calendar quarter of the base period in which the individual's insured wages were the highest . . . *The State shall by law provide which one or more of the foregoing methods of measuring employment and earnings shall be used* in that State. (Emphasis added.)

The corresponding federal regulation, 20 CFR § 615.4 – Eligibility requirements for Extended Benefits, incorporates the above statutory language, as follows:

(b) Qualifying for Extended Benefits. The State law shall specify whether an individual qualifies for Extended Benefits by earnings and employment in the base period for the individual's applicable benefit year as required by section 202(a)(5) of the Act....

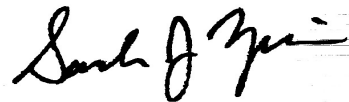
In light of the express federal law authority allowing the states to choose which method of measuring base period wages for purposes of qualifying for extended benefits and the Legislature's election in State law to implement this choice in Massachusetts solely through the "40-times" and "1 ½ times high quarter" methodologies, we conclude that the DUA has lawfully chosen not to recognize the 20-week criterion. In the present appeal, the claimant did not have wages during the base period of the current benefit year in an amount which exceeds 1 ½ times the wages of the individual's highest quarterly earnings or 40 times the most recent weekly benefit amount including dependency benefits. Therefore, the agency correctly disqualified the claimant, under 430 CMR 4.01(7).¹

The review examiner's decision is affirmed. The claimant is denied extended benefits.

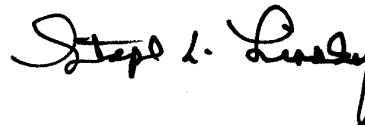


John A. King, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF MAILING - January 27, 2010



Sandor J. Zapolin
Member



Stephen M. Linsky, Esq.
Member

ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS DISTRICT COURT
(See Section 42, Chapter 151A, General Laws, Enclosed)

LAST DAY TO FILE AN APPEAL IN COURT – February 26, 2010

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¹ We do not doubt that there are others who, like the claimant, would have been eligible for extended benefits if the DUA had been authorized under state law to use the "20-weeks" method. However, that power must be conferred on the agency by the Legislature; it cannot be done by this Board.