

THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT  
BOARD OF REVIEW

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## BOARD OF REVIEW DECISION

BR-113830 (Mar. 16, 2011) -- An employee, who was hired to work full time and whose employer then reduces his hours to part-time on-call, is in partial unemployment. The Mattapoissett doctrine does not disqualify a claimant under these circumstances.

### 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 unemployment benefits. We review pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant, who had previously been in full-time employment, was offered only part-time work beginning in April, 2009. After a week of no work in February, 2010, he filed a claim for unemployment benefits with the DUA which was denied in a determination issued on February 25, 2010. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the claimant, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on April 29, 2010.

Benefits were denied after the review examiner determined that the claimant's employment status was that of a part-time, on-call employee and, thus, he was not in partial or total unemployment under G.L. c. 151A, § 1(r). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we accepted the case for review and offered the parties an opportunity to submit reasons for agreeing or disagreeing with the decision. Only the employer responded. 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 claimant's appeal, and the written submission of the employer.

The issue on appeal is whether the claimant and the employer understood at the beginning of the employment relationship that the hours of employment were to be irregular and less than full time.

Findings of Fact

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

1. The claimant is employed on an on-call basis as a delivery worker for the employer, an automobile delivery service.
2. The claimant began working for the employer on a full-time basis in approximately 2002. When the claimant was hired, he did not work for the employer on an on-call basis.
3. In approximately April of 2009, the employer changed the claimant's status to on-call due to a lack of work. The employer did not change the claimant's status to on-call at the claimant's request.
4. As an on-call employee, the claimant receives work assignments via telephone calls from the employer. The employer contacts the claimant in the morning when the claimant is needed to work that day.
5. On February 5, 2010, the claimant filed a claim for unemployment insurance benefits with an effective date of January 31, 2010.
6. For the weeks ending February 6, 2010 and February 13, 2010, the claimant believes that he worked. The claimant worked no more than 15 hours per week.
7. The claimant accepts all available work from the employer.

Ruling of the Board

The Board adopts the review examiner's consolidated 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.

G.L. c. 151A, § 29(b), authorizes benefits to be paid to those in partial unemployment. Partial unemployment is defined at G.L. c. 151A, § 1(r)(1), which provides, in relevant part, as follows:

“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; . . .

Total unemployment is defined at G.L. c. 151A, § 1(r)(2), which 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. . . .

The claimant was a full time employee from 2002 until April of 2009, when the employer unilaterally changed his status to part-time, on-call, as needed, with no expectation of a minimum amount of work. The review examiner, seemingly relying on Town of Mattapoisett v. Dir. of Division of Employment Security, 392 Mass. 546 (1984), denied the claimant benefits during those weeks when he was offered any work. We think that this was a misapplication of the Mattapoisett doctrine.

In Mattapoisett, the Court held, as follows:

To characterize such employees as “partially unemployed” when both parties *understood at the beginning of the employment relationship* that the hours of employment were to be irregular and less than full time is to torture the plain meaning of the term. . . . We conclude, therefore, that the Legislature did not intend a part-time employee whose hours vary from week to week to be considered in partial unemployment for any week in which he does not work as many hours as a full-time employee.

Id. at 549 (emphasis added).

However, such were not the facts of this case. The claimant's understanding at the beginning of his employment was that the job was to be full time, and he was reduced to a part-time, on-call schedule after seven years as a full-time worker, just a few months before he filed his unemployment claim.

In our view, another portion of the Mattapoisett decision controls this case: "There is no question that, if an employee is hired as a full-time employee and cut back to part-time employment, the department's interpretation of the statute [that the employee is in partial unemployment] would apply." Id. at 548.

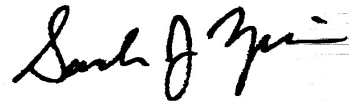
We, therefore, conclude as a matter of law that the claimant is in partial unemployment for any week of less than full-time work or in which he has received aggregate remuneration in an amount which is less than the weekly benefit rate to which he would be entitled if totally unemployed during said week. Further, the claimant is in total unemployment in any week in which he performs no wage-earning services whatever, and for which he receives no remuneration.

The review examiner's decision is reversed. The claimant is entitled to benefits for weeks when the employer offers less than a full-time schedule of work.

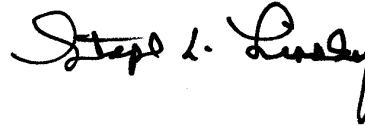


John A. King, Esq.  
Chairman

**BOSTON, MASSACHUSETTS**  
**DATE OF MAILING - March 16, 2011**



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 – April 15, 2011**