

0016 1648 59 (Dec. 28, 2015) – Claimant, who was retroactively awarded training benefits on appeal, may quit subsidiary part-time employment obtained during the benefit year, because his part-time job interfered with his participation in an approved full-time training program, without incurring disqualification or a constructive deduction.

**Board of Review**  
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**Issue ID: 0016 1648 59**  
**Claimant ID: 943513**

## **BOARD OF REVIEW DECISION**

### **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 was separated from his position with another full-time employer on May 23, 2014. He filed an initial claim for unemployment benefits with the DUA, which was subsequently approved. On January 14, 2015, the claimant submitted an application for training benefits. The following day, on January 15, 2015, the claimant exhausted his regular unemployment benefits.

The claimant began attending school full-time on February 2, 2015. On February 5, 2015, the DUA denied the claimant's application for training benefits. The claimant appealed that disqualification to the DUA hearings department. Following a hearing on the merits, another DUA review examiner overturned the agency's disqualification and awarded the claimant training benefits in a decision rendered on May 1, 2015.

Shortly after the claimant applied for training benefits and began his training program, he obtained part-time employment with this employer on February 23, 2015. However, the claimant quit this part-time job on March 2, 2015, because it interfered with his ability to participate in his full-time training program. On June 5, 2015, the agency determined that the claimant's separation from this employer was disqualifying, and subjected him to a constructive deduction and reduced his weekly benefit rate. The claimant appealed this determination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner affirmed the agency's determination and the constructive deduction, in a decision rendered on August 10, 2015. We accepted the claimant's application for review.

The constructive deduction was applied after the review examiner determined that the claimant voluntarily left employment without good cause attributable to the employer and without urgent, compelling, and necessitous reasons and, thus, was disqualified, under G.L. c. 151A, § 25(e)(1). After considering the recorded testimony and evidence from the hearing, the review examiner's

decision, and the claimant's appeal, we afforded the parties and the DUA legal department an opportunity to submit written reasons for agreeing or disagreeing with the decision. Only the DUA legal department responded. Our decision is based upon our review of the entire record.

The issue before the Board is whether the claimant, who was retroactively awarded training benefits on appeal, may quit subsidiary part-time employment obtained during the benefit year because his part-time job interfered with his participation in a full-time training program without incurring disqualification or a constructive deduction.

### Findings of Fact

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

1. The claimant separated from his full-time employer on May 23, 2014.
2. The claimant filed a claim for unemployment insurance benefits and his weekly benefit amount was set at \$176.00. The claimant's earning's disregard was set at \$58.67 ( $\$176.00 \div 3$ ).
3. On January 14, 2015, the claimant submitted a Training Opportunities Program (Section 30) Application to the Department of Unemployment Assistance (DUA) as indicated in DUA records.
4. On January 15, 2015 the claimant exhausted his unemployment insurance benefits.
5. On February 2, 2015 the claimant started school full-time.
6. On February 5, 2015 the claimant's Training Opportunities Program (Section 30) Application was denied as indicated in DUA records.
7. On February 23, 2015 the claimant obtained new part-time employment with the instant employer, a delivery company, as a freight handler. The claimant worked 5:00 p.m. to 9:00 p.m. Monday through Friday. The claimant was paid \$11.76 per hour. The claimant's average weekly [salary] was \$163.00.
8. The claimant secured new part-time employment with the instant employer because he had exhausted his savings and had financial problems.
9. On March 2, 2015 the claimant notified the instant employer he was leaving his employment because he couldn't keep up with his school work; he was "committed to school"; and "did what I felt best".
10. On May 1, 2015 the claimant's Section 30 application was approved retroactively.

11. The claimant was not subject to any disciplinary action at the time of separation.

12. Work was available for the claimant at the time of separation.

### Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the findings of fact are supported by substantial and credible evidence; and (2) whether the review examiner's ultimate 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's separation from part-time employment under these circumstances disqualifies him from benefits.

The review examiner disqualified the claimant from benefits and applied a constructive deduction pursuant to G.L. c. 151A, § 25(e)(1), which provides, in pertinent part, as follows:

No waiting period shall be allowed and no benefits shall be paid to an individual under this chapter . . . (e) For the period of unemployment next ensuing . . . after the individual has left work (1) voluntarily unless the employee establishes by substantial and credible evidence that he had good cause for leaving attributable to the employing unit or its agent . . .

In most cases where a claimant quits a job to attend school full-time (or because work interferes with his ability to attend school full-time), he is ineligible for unemployment benefits under this provision of the statute, because he bears the burden of proving that he quit for good cause attributable to the employer. However, our interpretation of several other statutory and regulatory issues applicable to this case compels a different outcome.

Prior to obtaining part-time benefit year employment with this employer, the claimant applied for training benefits, pursuant to G.L. c. 151A, § 30(c), which relieves claimants who are enrolled in approved training programs of the obligation to search for work, and permits extensions of up to 26 weeks of additional benefits. The statutory foundation for relief of the requirement to apply for or accept suitable work is found in G.L. c. 151A, § 25(c), which states, in pertinent part:

An individual who is certified as attending an industrial retraining course or other vocational training course as provided under section thirty shall not be denied benefits . . . relating to failure to apply for, or refusal to accept, suitable work.

The procedures and guidelines for implementation of training benefits are set forth in 430 CMR 9.00–9.09. Under G.L. c. 151A, § 30(c), it is the claimant's burden to prove that he fulfills all of the requirements to receive a training extension.

The regulations that govern training benefits establish both procedures and standards for approving training programs, as well as the eligibility criteria for claimants seeking to participate in such programs. *See* 430 CMR 9.01.

430 CMR 9.04(1)(c) states:

A claimant shall be eligible ... during the pendency of any dispute regarding eligibility for leaving work under M.G.L. c. 151A, § 25(e), provided the claimant is receiving benefits ....

430 CMR 9.07(2) states:

Participants approved under M.G.L. c. 151A, § 30(c) shall not be required to engage in work search activities, and shall be deemed available for suitable work during any week in which the participant is in attendance at the approved training program, or during an approved break in training ....

Here, the claimant's separation from this part-time employment was entirely voluntary and would not have supported an additional award of regular unemployment benefits. However, from the effective date of approval of his training benefits and so long as he remains otherwise eligible, the claimant had no obligation to apply for or accept suitable work. *See* Board of Review Decision 0016 1171 46 (December 18, 2015).<sup>1</sup> When the claimant's training benefits were ultimately approved, this approval was applied retroactively, so that the effective date of the claimant's approval was February 2, 2015. From that date and while attending the approved program, the claimant had no obligation to accept work from this employer or to remain employed with this employer. Because we conclude that under these circumstances, the claimant was relieved of the requirement to accept suitable employment, under G.L. c. 151A, § 25(c), his benefits during the relevant period are not subject to a constructive deduction.

We, therefore, conclude as a matter of law that the claimant's separation from employment with this employer, which both began and ended after he had already submitted an application for training benefits, for which he ultimately was approved retroactively, is not disqualifying, under G.L. c. 151A, §§ 25(c) or 25(e)(1).

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<sup>1</sup> Board of Review Decision 0016 1171 46 is an unpublished decision, available upon request. For privacy reasons, identifying information is redacted.

The review examiner's decision is reversed. The claimant is entitled to receive benefits without the imposition of a constructive deduction for the week ending March 7, 2015, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - December 28, 2015**



Paul T. Fitzgerald, Esq.  
Chairman



Judith M. Neumann, Esq.  
Member

Member Charlene A. Stawicki, Esq. did not participate in this decision.

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS STATE DISTRICT  
COURT OR TO THE BOSTON MUNICIPAL 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.

JPC/rh