

Claimant quit when she believed both that the employer was not treating her fairly and that she was being asked to perform duties which put her nursing license in danger. However, because she did not show through substantial and credible evidence that her beliefs were reasonable or true, she is subject to disqualification under G.L. c. 151A, § 25(e)(1). Since the separation was from a part-time employer in her benefit year, and the work was subsidiary to other primary work in the base period, the claimant is subject to a constructive deduction.

**Board of Review
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BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Michele Lerner, a review examiner of the Department of Unemployment Assistance (DUA), to deny unemployment benefits beginning January 31, 2016. We review, pursuant to our authority under G.L. c. 151A, § 41. We affirm that the claimant separated for disqualifying reasons; however, we reverse the total disqualification imposed by the review examiner.

The claimant separated from her position with the employer on January 19, 2016. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on February 23, 2016. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on May 14, 2016.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment without good cause attributable to the employer 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 accepted the claimant's application for review and remanded the case to the review examiner to take additional evidence as to whether, in the event that the claimant's separation is determined to be disqualifying, a constructive deduction rather than a full disqualification should be imposed on her unemployment claim. Both parties attended the remand hearing, which was convened on November 15 and December 19, 2016. Thereafter, the review examiner issued her consolidated findings of fact and returned the case to the Board on February 15, 2017. Our decision is based upon our review of the entire record.

The issues before the Board are: (1) whether the review examiner's conclusion that the claimant is disqualified from receiving benefits, pursuant to G.L. c. 151A, § 25(e)(1), is supported by

substantial and credible evidence and is free from error of law, where the review examiner found that the claimant quit her job when she gave her two weeks' notice on January 18, 2016, and the reasons for her resignation either did not constitute good cause or were not brought to the attention of the employer; and (2) if the separation is disqualifying, whether the claimant should be subject to a constructive deduction, pursuant to 430 CMR 4.71–4.78.

Findings of Fact

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

1. The claimant's 2014-01 claim for unemployment benefits was effective December 21, 2014.
2. On October 1, 2015, the claimant began working for [Company A]. She provided skilled nursing care in the homes of this employer's clients for which she was paid \$43 an hour. Her schedule with this employer varied from 0 and 30 hours a week.
3. On October 2, 2015, the claimant began working as a part time Registered Nurse for the present employer. She was hired to work up to 24 hours a week and was paid \$25 an hour for this work.
4. The present employer is an assisted living facility with two units. One unit is for traditional care and one is for memory assisted care.
5. The present employer's residents live in their own apartments and the employer does not provide skilled care nursing. Nurses working for the employer may only provide emergency/first aid type care.
6. The claimant had concerns that she would be endangering her nursing license if she did not provide skilled nursing care where she, in her capacity as a nurse, assessed that there was a need for such care. This including reporting concerns to a doctor or other person with more medical authority than herself.
7. The present employer required CNAs who were certified by the Executive Office of Elder Affairs in the Self-Administered Medical Management program to assist residents with medications. Under this program they could cue residents to take medications but could not administer medications. The medication would be provided by either family members or a pharmacy, in a container marked with the date and time (morning, afternoon, evening) the medication was to be taken. They could assist the resident with opening the package and put the medication into a resident's hand but could not assist them in getting the medication from hand to mouth.
8. RNs and LPNs were not allowed, under the requirements of their professional licenses, to participate in SAMM programs. They were instead expected to assist residents with medications under the Limited Medical Administration

(LMA) program. Under this program they could administer medications to residents if such medication came in pharmacy packaging and did not have to be injected. Under the LMA program licensed nurses could also crush or score the medication so that it matched correct dose as prescribed by a doctor. The doctor's orders were to be entered into a computer program by nurses.

9. The claimant suspected that the present employer's Memory Care unit Manager, who was not a RN or LPN, transcribed doctor's orders into the computer. She therefore did not feel comfortable administering medications under the employer's LMA program.
10. The claimant's 2014-01 claim expired on December 19, 2015.
11. The claimant filed her 2015-01 claim for unemployment on December 21, 2015, effective December 20, 2015. She did so because her 2014-01 claim had ended and she wanted to continue to collect partial unemployment benefits while working part time for the present employer. She also wanted to continue her eligibility for Section 30 benefits while completing her nursing program.
12. The claimant was paid \$862.50 by her employers during the week ending December 26, 2015.
13. The claimant worked for both [Company A] and the present employer in October and November of 2015.
14. The claimant was still on the employee list for [Company A] when she filed her 2015-01 claim through she did not work any hours for them after November 2015.
15. During the 4th quarter of the 2015, which is part of the base period of the claimant's 2015-01 unemployment claim, the claimant was paid \$11,296.50 by [Company A] and \$7359.38 by the present employer.
16. In the present employer's employee handbook it states "in the event you decide to resign from your position at the community, the community requests that you provide notice, in writing to your supervisor and the Business office at least two (2) weeks prior to your last day."
17. While working for the employer the claimant was a licensed RN in Massachusetts and a licensed LPN and a RN in Rhode Island. She was going to school in RI to get her bachelor degree in Nursing.
18. The claimant was supervised by the Resident Care Director, who was a LPN. A nursing license was not required for this position since the employer does not provide skilled nursing services. The claimant was not comfortable reporting to a nurse who had less skilled nursing training than herself.

19. The claimant felt that her co-workers did not like her. She suspected that they were looking for ways to get her fired. She heard one coworker make at least one comment that was derogatory towards Haitians.
20. In October and November of 2015 the claimant heard 2 Caucasian nurses state that Haitian people are “rude, crass and uneducated and that’s why their ignorance keeps them in a position of servitude.” She also stated that one of these nurses asked her if she was Haitian and said “you are stupid and that why it takes you so long. You aren’t able to get tasks done and I have to pick up the slack.” The claimant did not report these statements to management.
21. During a November 2015 nursing meeting the claimant felt that she was being accused of things she had not done. As the issues were discussed during the meeting it became apparent that the things in question had been done by other nurses. The Resident Care Director did not leave the meeting with the impression that the claimant had been accused any wrong doing.
22. Management had some concerns that the claimant was not arriving on time to work. The Resident Care Director informally counseled the claimant about this. In December 2015 the Resident Care Director adjusted the claimant’s schedule so that she would start her shift at 7:30am.
23. Sometime in November 2015, the receptionist and one of the Personal Care Assistants (PCA) were discussing the claimant over their radios in a negative manner. The claimant became aware of this and was very upset, in part because the radio could be overheard by other staff and residents. She contacted the Resident Care Director, who in turn contacted the receptionist’s supervisor. The receptionist apologized to the claimant and the two agreed to put the incident behind them.
24. On December 13, 2015, the claimant heard the Assistant Executive Director of the Memory Care Unit, who was African American, tell a CNA that “even a monkey can dispense medication and render first aid.” Since the claimant was the only nurse dispensing medication on that shift she believed the comment was directed at her.
25. Other than the issue with the receptionist and PCA the claimant did not, until January 4, 2016, inform the employer that she was having any problems working with her co-workers.
26. On Monday January 4, 2016, the claimant was covering a co-worker’s shift. She was trying to provide medication to a resident with memory issues. This resident was very confused about the medications and became agitated when the claimant tried to give him the medications. The claimant concluded that it would be best not to continue to offer the resident the medications. She instead took him to the dining room where she got him some ice cream to calm him down. The resident began talking about something that made him

- cry. A CNA noticed the interaction and thought the claimant was giving the resident medication in a common area, which was a violation of policy.
27. The CNA reported her concerns to the Assistant Executive Director for the Memory Care Unit. The Assistant Executive Director called the Resident Care Director and asked her to investigate the situation.
 28. The claimant had noticed the CNA looking at her and then going to the Assistant Executive Director. She expected that the CNA was reporting her for something.
 29. The Resident Care Director came down to the dining room and asked the claimant what she was doing. She told the Resident Care Director what she had done in regards to the resident's medication and the ice cream. She became very upset that the CNA and the Assistant Executive Director had, in her mind, accused her of violating the medication policy without giving her the courtesy of speaking to her first to get the facts. The claimant became so emotional that the Resident Care Director needed to take her to a private area to talk about the issue. The Resident Care Director told the claimant not to take the situation to heart and that people will always talk about other people. She gave examples from her own life and suggested that as the rest of the staff got to know the claimant things would become easier and more comfortable. She talked about the claimant being slower than other nurses at completing the medication pass. This also upset the claimant because she wanted the Resident Care Director to be focused, in this conversation, on how she herself had been wrongly accused, not on her ability to do her job.
 30. During the above meeting the Resident Care Director mentioned that she was going to need to request an attendance report on the claimant. The claimant had noticed other employees looking at her and talking among themselves when she arrived at 7:30 instead of 7:00, per the change in her schedule and assumed that someone had made a false accusation that she was late in order to try and get her fired. She became concerned that she was going to be disciplined for what she believed was a non-existent attendance problem.
 31. Later in the shift the claimant met with the Assistant Executive Director and told her that she would have appreciated it if she had come and asked her directly what was going on rather than reporting the alleged incident to the claimant's supervisor.
 32. At some point in her employment the claimant was asked to assist the PCAs due to an issue with being under staffed. The claimant believed this help would include doing a medication pass under the SAMM program, which she could not do under her license since some of the medications did not come directly from a pharmacy. The Resident Care Director had not however, expected her to assist with the SAMM duties.

33. Over the weekend of January 9, 2016, one of the resident's came to the claimant requesting that she bandage her leg due to blisters that were caused by a medical condition the resident suffered from. The claimant believed that this was a skilled medical intervention, which she was not allowed to do, and refused the request. This upset the resident who stated that other nurses had helped her. The resident asked for a band aid and the claimant told her that they did not have any. The claimant contacted the Resident Care Director, who was on-call over the weekends about the situation. The Resident Care Director told her that providing a band aid would be first aid and not skilled nursing and that the claimant could therefore provide one. She told her to ask the Assistant Executive Director if they had any in the office.
34. The claimant disagreed that providing a band aid was first aid. She believed this was actually a skilled nursing treatment of an on-going medical condition. She was uncomfortable accepting the Resident Care Director's opinion on this and other nursing questions since the Resident Care Director had less training in skilled nursing than the claimant.
35. Over the weekend, of January 9, 2016, a resident fell. The claimant as a mandated reporter was required to file a report with the EOE. This was normally done online but the claimant could not access the program without assistance. She therefore found a form online, printed it and then faxed it in. When the claimant informed the Resident Care Director that she had done this the Resident Care Director questioned where she had found the form to fax in, since the process was usually done online. This questioning led the claimant to think the employer was trying to avoid having falls reported.
36. Over the weekend of January 9, 2016, the claimant attempted to order extra gravy on meals for a resident who had difficulty swallowing due to a medical condition. The claimant was concerned that this resident was in danger of choking and felt that as a licensed nurse she was required to take some action to prevent her from choking rather than just be available to give CPR if she did choke. The claimant was advised that the employer, and therefore the claimant as the employer's agent, could not modify a resident's diet. They could only advise the family of this issue and make suggestions.
37. The claimant began to think that the employer, in order to maintain paying clients, was intentionally not taking action to get residents who likely need more help than an Assisted Living residence could provide, assessed and if necessary moved to a situation where more intensive care could be provided.
38. The claimant was not aware of all the communication that took place between the clients, the client's families, the doctors and the Resident Care Director in regards to making sure the residents were getting all the care they needed and whether the Assisted Living situation continued to be an appropriate placement for them.

39. The claimant contacted a staff person at EOEA to ask for clarification as to her role as a RN at an Assisted Living Facility. After speaking to this staff person the claimant felt that the employer's policies were not following EOEA requirements and/or nursing license requirements, particularly in relation to what was considered first aid and what was considered skilled nursing care; how medications were given to the residents; and her ability to assess a resident and report concerns directly to a doctor. She became concerned that her job with the employer might endanger her nursing license.
40. On or about January 9, 2016, the claimant asked the Human Resources Director for her employee file. There was a delay in the claimant getting the file as it had to be prepared for her and then there was confusion as to whether the claimant was going to pick it up or if it would be mailed.
41. The Resident Care Director asked the claimant to come in for a meeting, on or about January 13, 2016. There was a possibility that the claimant would be given a disciplinary action warning at this meeting though she was not directly told this.
42. On or about January 10, 2016, the claimant informed the Resident Care Director that due to her son's medical issues she would be unable to meet with her during this week and that she would not be able to work over the weekend. She stated that she could provide a doctor's note and asked the Resident Care Director to process a sick leave request for those shifts. The Resident Care Director hesitated and indicated that she was not sure that she could do this. Her hesitation was due to being unsure if the claimant had earned sick time available. The claimant assumed the hesitation was due to an intention to terminate her employment at the meeting that she had just canceled. The claimant therefore asked if she had been discharged or suspended. The Resident Care Director told her that she was not.
43. The claimant contacted Human Resources regarding her sick leave request and received the sick leave, though a correction had to be made as to the days to which the leave would be applied.
44. On or about January 11, 2016, the claimant told the Resident Care Director that she had spoken to a staff person at EOEA and that this staff person had clarified what her role was at in an Assisted Living situation. She did not tell the Resident Care Director that she believed the employer was asking her to act outside of what her nursing license required.
45. The claimant believed that the two other nurses, who were white, were scheduled so that their shifts overlapped allowing for more assistance during the time that medications were passed out. When the claimant worked a double shift there was no such overlap. The claimant felt that this scheduling anomaly was a form of discrimination due to her being black. She did not

- bring this concern to the attention of the employer until after she left her employment.
46. On January 18, 2016, at 1:43 p.m., the Resident Care Director sent a text to the claimant indicating that she had received the claimant's note and asking if she could come in the following day.
 47. On January 18, 2016, the claimant sent a text to the Resident Care Director, at 8:47 p.m., stating that she was starting classes the following day but would do her best to meet with the Resident Care Director. She also stated in this text "I have to give you my 2 weeks notice...I am truly grateful for everything that you have done for me...and I've taken all of your counsel to heart...I don't want to cause you to lose..I'm hoping this text will do...if not I can send an e-mail ...Be well...let me know if a meeting is still necessary. Thanks."
 48. The claimant was offering her resignation because she felt that her co-workers were hostile towards her; that she was treated differently by the employer due to her race; and that the employer's policies were in conflict with her responsibilities as a nurse. She also believed she was likely to have received some sort of disciplinary action if she attended the meeting the Resident Care Director had requested. She believed any such discipline would have been unwarranted and given only to create a reason to terminate the claimant due to her having raising issues as to the legality of some of the employer's nursing policies.
 49. After sending the above described text, the claimant spoke to someone at the unemployment office and to someone at the Massachusetts Commission Against Discrimination. She was advised that it would be in her best interest to try and resolve her issues with the employer before resigning if she was going to seek assistance from either of these two agencies.
 50. On January 19, 2016, the Resident Care Director sent a response text requesting that the claimant send the e-mail resignation letter she referenced in her prior text and thanked her for her kind words in her text.
 51. The claimant responded to the Resident Care Director's request with a text stating that that she had been advised to "try to work this out and recant" her resignation. She further stated in this text "I am certain that neither party is willing to seek resolution. I will detail in my e-mail addressed to both you and various entities my work experience at [the employer's name] and the environment that was fostered." She asked the Resident Care Director to send her a text or e-mail stating that she was fired. In addition she stated that if the Resident Care Director still wanted to meet with her she was available Thursday morning around 10am.
 52. The Resident Care Director responded that she would be looking for the claimant's e-mail and that she would consider the text thread to be the

claimant's written notice. She stated that the claimant did not need to come in for the remainder of her notice.

53. The claimant responded with a text asking what the text thread was being considered notice of. The Resident Care Director responded that it would be considered her two week notice. The claimant in turn responded that her resignation was recanted and requested a text or e-mail stating that she was fired. She also suggested that the employer could just take her off the schedule so that she could report that there were no hours for her as any other way is "litigious and ugly."
54. On January 19, 2016, the Director of Human Resources sent the claimant a letter stating that as a result of the claimant having sent the Residential Care Director a text message stating that she was giving her two week notice the employer was accepting the claimant's notice and that the claimant had been removed from the schedule going forward. The claimant received this letter at some point before her next scheduled shift on January 23, 2016.
55. On January 21, 2016, at 6 a.m., the claimant sent an e-mail entitled "Interesting Things at [Name]" to the Resident Care Director in which she explained in detail numerous concerns she had in relation to her employment with the employer. These issues included:
 - a. Official schedules that did not conform to her agreed availability;
 - b. False allegations of an attendance issue;
 - c. Receiving incorrect actions plans from the Resident Care Director;
 - d. Receiving vague answers from the Resident Care Director in response to questions she asked;
 - e. Being directed to act in manners which were not in keeping with the scope of her position and/or for which she was not trained;
 - f. Being asked to assist PCA's and administer SAMM medications;
 - g. Being ill-advised by the Residential Care Director that the pharmacy enters the prescription medications in the electronic tablets and therefore the electronic tablets were always right. And stating that the claimant could cut a scored medication to provide a resident with a half dose as prescribed even if the medication was not packaged that way;
 - h. Being told by the ALF Administrator for the Executive Office of Elderly Affairs that, in contrast to what the employer was asking her to do, nurses in an Assisted Living setting should not administer SAMM medications and should not perform wound care;

- i. The employer's alleged failure to differentiate between registered nurse, a licensed practical nurse, a Licensed Vocational Nurse, a Nursing student or a self-proclaimed nurse;
 - j. Staff allegedly intentionally making it difficult for the claimant to medicate patients by giving the food to eat just before medication so that their mouths were full or locating residents who had difficulty with ambulation at the most remote areas of the unit;
 - k. Having an Assistant Manager state, in what the claimant believed to be a reference to herself, "any monkey can give medication and perform first aid."
 - l. Having the same Assistant Manager ignore critical patient care matters but make an issue of a non-issue that she said was caused by the claimant's alleged negligence;
 - m. Fellow registered nurses making comment that Haitian people were crude, crass and ignorant;
 - n. Having a nurse state that the claimant was inadequate in her skills and therefore only this nurse could perform the assigned tasks;
 - o. Having staffing trying to find evidence that she was either intoxicated at work or had intoxicating substances with her at work;
 - p. A receptionist maligning her over the facilities communications system which was heard by staff, resident's and family;
 - q. Accusations by a Resident Care Director, during a Nurses Meeting, that the claimant failed in her medication delivery, committed a medication error, misplaced a residents treatment materials and/or committed other atrocities;
 - r. The Executive Director's Assistant made unsubstantiated accusations that the claimant consistently violated the employer's policies and habitually medicated persons in common areas.
56. On January 21, 2016, the claimant also filed a complaint against the employer with the Massachusetts Commission Against Discrimination (MCAD).
57. The Director of Human Resources called the claimant, on or about January 21, 2016, to make sure she had received her requested employee file. The claimant expressed during this conversation an intention to appear for her shift on January 23, 2016. The Director of Human Resources told the claimant that she would be subject to arrest if she came onto the employer's property.

58. On January 22, 2016, the Human Resource Director called the claimant to make sure she had received her employee file. Later that day the claimant sent a letter to the Director of Human Resources in which she asked why the employer kept referring to her non-existent resignation and suggested that they could terminate their relationship if the employer would issue a termination letter. She implied that the only reason the employer had complied with the request her employee file was that the claimant had filed the complaint with the MCAD.
59. On January 23, 2016, the claimant reported for work and was met by a Police Sargent before she stepped onto the employer's property. She showed the Sargent the letter she had received from the employer stating that her notice had been accepted. The Manager came to the site where the claimant had reported and gave the Police Officer a no trespass order to give to the claimant.
60. On February 23, 2016, DUA issued a Notice of Disqualification, with Issue Identification Number 0017 9008 17-01.
61. The claimant worked for the present employer for 4 weeks after the effective date of her 2015-01 unemployment claim.
62. The claimant worked no more than 24 hours a week for the present employer after the start of her 2015-01 claim. She was paid \$25 an hour for this work.
63. It is unknown how much the claimant was paid by the present employer for the week ending December 26, 2015. Neither the claimant nor the employer had this information and the review examiner, in error did not enter the Wage detail screens for 2015, only 2016.
64. The claimant worked 64 hours and was paid \$1909.75 by the present employer between January 1, 2016, and January 16, 2016.
65. On June 24, 2016, DUA issued a Corrected Notice of Approval, finding that the clamant was entitled to Section 30 training benefits while attending the Bachelors — Nursing program at Rhode Island College from January 20, 2015 through May 18, 2016, and that she was enrolled at Rhode Island College full time Registered program 9/04/16, through 12/29/16, carrying 13 credits and this is the 13 credits remaining to complete the degree.
66. On February 21, 2015, the claimant was approved under Section 25(e)(2) of the law to receive benefits based on her separation from The Commonwealth of Massachusetts.
67. On September 22, 2015, the claimant was approved under Section 24(c) of the law and found to have a reopened effective claim date of August 23, 2015.

68. On October 15, 2015, the claimant was approved under [Sections] 29(b) and 1(r) of the law, starting September 6, 2015, based on her being in partial unemployment with [Company B].
69. On October 16, 2015, the claimant was disqualified, starting October 4, 2015, under [Section] 29(d)(6) of the law based on receiving a retirement benefit of \$0 which was funded by her employer, [Company C] Hospital.
70. On October 23, 2015, the claimant was approved under [Sections] 29(b) and 1(r) of the law, starting October 4, 2015, based on being in partial employment with the present employer.
71. On October 24, 2015, the claimant was approved under Section 25(e)(2) of the law in relation to her separation from employment with [Company B].
72. On January 22, 2016, the claimant was approved under [Sections] 29(b) and 1(r) of the law, for a period beginning December 20, 2015, due to having received no hours of work from [Company A].
73. On January 22, 2016, the claimant was approved under [Sections] 29(b) and 1(r) of the law for the period beginning December 13, 2015, due to being in partial unemployment with the present employer.

Ruling of the Board

In accordance with our statutory obligation, we review 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 ultimate conclusion is free from error of law. Upon such review, the Board adopts the review examiner's consolidated findings of fact and deems them to be supported by substantial and credible evidence. As discussed more fully below, we agree with the review examiner's conclusions that G.L. c. 151A, § 25(e)(1), applies in this matter and that the claimant's separation from her employment was disqualifying under that statute. However, we reject the review examiner's conclusion that the claimant is subject to a full disqualification, beginning January 31, 2016. Based on her other employment, the claimant is subject to only a constructive deduction following her disqualifying separation from this employer.

Before addressing the specifics of the separation itself, we must consider which section of law applies. The review examiner concluded that G.L. c. 151A, § 25(e)(1), which governs quit situations or voluntary resignations, applies. During the hearing, the claimant testified that she did not quit, and that she only had submitted her intention to quit in a text message sent on January 18, 2016. She also testified that she was contesting the employer's allegation that she quit her job. Addressing the claimant's arguments in her decision, the review examiner noted and concluded the following:

The claimant sent the employer a text which stated in part "I have to give you my 2 weeks notice...I am truly grateful for everything that you have done for

me...and I've taken all your counsel to heart...don't want to cause you to lose..Im hoping this text will do...if not I can send an e-mail..." The following day the claimant sent a text which stated, in part, "I've been advised to try and work this out and recant my resignation." The claimant has argued that since the employee handbook states "in the event you decide to resign from your position at the community, the community requests that you provide notice, in writing to your supervisor and the Business office at least two (2) weeks prior to your last day[,"] her text message may not be considered a resignation. This argument was not accepted by the review examiner. The language of the text clearly indicated that, when the claimant sent the first text message, she was intend[ing] it to be a 2 week written notice of resignation. The [employer's] stated preference to have a resignation in writing does not change the intent of the text. Once the claimant clearly communicated her intent to resign the employer was under no obligation to allow her to rescind the resignation. For the purpose[s] of this unemployment decision the separation shall be considered as being initiated by the claimant, with an effective date of Monday February 1, 2016.

We find nothing unsupported or legally erroneous with the review examiner's reasoning regarding this issue. Although the claimant may assert that she only was submitting her intent to resign, that is not what the text messages indicate. Thus, it was entirely reasonable for the review examiner to conclude that the claimant intended the texts to be a resignation, and that she initiated her separation. See Abramowitz v. Dir. of Division of Employment Security, 390 Mass. 168, 172–174 (1983). It was appropriate for the review examiner to apply G.L. c. 151A, § 25(e)(1) in this case.

G.L. c. 151A, § 25(e)(1), 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

Under this section of law, the claimant has the burden to show that she is eligible to receive unemployment benefits. The review examiner concluded that she had not carried her burden. We agree.

As indicated in the review examiner's decision, the claimant raised myriad allegations against the employer and provided various reasons for sending the January 18, 2016 text message. The January 21, 2016, e-mail sent by the claimant to the employer includes most, if not all, of the claimant's allegations and issues. The review examiner's decision focused on three main areas: the co-workers' comments about the claimant over the employer's radio system, the report that the claimant was medicating a resident in a public area, and the claimant's issues with her duties as it related to her nursing license. As to the other problems and issues she may have been having at work, the review examiner concluded that the claimant had not made the employer aware of any such problems. In reaching her findings, the review examiner had to resolve disputed and contested testimony from the parties. The claimant testified that she had made the

employer aware of various issues; the employer denied this as to certain issues. We conclude that the review examiner's findings are reasonable based on the testimony presented to her. She made extensive findings of fact, incorporating and synthesizing the parties' testimony, after hearing the case over the course of four days and a total of approximately six hours of testimony. We see no reason to disturb those findings. *See School Committee of Brockton v. Massachusetts Commission Against Discrimination*, 423 Mass. 7, 15 (1996).

As to the issues addressed by the review examiner, we agree with her conclusions. The issue with the claimant being spoken about over the radio was addressed by the employer and put to rest in November of 2015. *See Consolidated Finding of Fact # 23*. Both the claimant and the person who had spoken about her (the receptionist) "agreed to put the incident behind them." Nothing in the findings indicates that the receptionist did not live up to her end of the bargain. The claimant suspected that another person was talking about her on December 13, 2015, but she did not bring this issue to the employer's attention at the time. It appears from the findings that the employer was responsive when told of problems with the claimant's employment. Therefore, we conclude that this did not create good cause for the claimant to resign.¹

Regarding the issue of the allegation of the claimant medicating a resident in a public area, the review examiner concluded the following:

The record does not indicate that anyone did anything inherently wrong in the situation where the Resident Care Director investigated a report that the claimant appeared to be medicating a resident in a public area. While the claimant may have preferred to have had the matter handled more directly, there was nothing inherently wrong with the CNA bringing her concerns to management rather than addressing them herself. There was also nothing inherently wrong with the Assistant Executive Director asking the claimant's direct supervisor to investigate the report rather than her doing so herself.

The Resident Care Director was reasonable in investigating what happened with the claimant and the resident. No adverse actions were taken against the claimant. The CNA appears to have interpreted what she saw incorrectly. But no bad faith or improper motives are indicated by the findings. The record does not suggest that the employer or the claimant's co-workers were trying to get her in trouble, contrary to the claimant's allegations and suggestions. This did not create good cause to quit.

Additionally, as the review examiner concluded, we are not persuaded that the claimant was actually being told to perform duties which were beyond her normal job duties or which were in violation of her nursing license, or that she reasonably believed such to be the case. The review examiner noted that the claimant "did not cite any specific regulations or laws which would have been violated by following the employer's policies." This conclusion is supported. She further concluded that, "[t]he record also indicates that the claimant may have misunderstood what some of the employer's expectations were[,] leading to an erroneous belief that she was being asked to

¹ To the extent that the claimant could argue that she resigned her employment due to racial harassment from her co-workers, *see Consolidated Findings of Fact ## 20, 23, and 24*, we do not think that the claimant has shown that the provisions of 430 CMR 4.04(5) apply in these circumstances.

engage in practices which would endanger her license.” While we think it unclear from the record that the claimant truly misunderstood what was expected of her, she certainly may have had a different interpretation of her job duties or responsibilities. The review examiner believed that the claimant contacted a state agency to verify and clarify her role. But, again, the claimant failed to provide substantial evidence to show an objectively reasonable basis for any belief that her role at the employer’s facility was contrary to law or regulation. We also agree that, prior to the claimant’s resignation text on January 18, 2016, the claimant did not make a sufficient effort to explain to the employer what she thought was improper about her job duties and what she had learned from the state agency she had contacted.

We make one final note about the claimant’s employment situation. Several of the findings indicate what the claimant “thought” or “suspected” or “assumed.” It appears that the claimant’s feeling and beliefs combined to create the impression that she was being treated unfairly by the employer. However, as we have noted above, the underlying circumstances giving rise to the claimant’s complaints have rational explanations, were taken care of by the employer, or were not raised by the claimant (thus suggesting that they were not principal reasons for her separation). Although some of her concerns were rooted in events which took place while she was employed, her interpretation of the events is not based on a reasonable view of the evidence or record. “[G]eneral and subjective dissatisfaction with working conditions” does not constitute good cause to quit a job. *See Sohler v. Dir. of Division of Employment Security*, 377 Mass. 785, 789 (1979). However, if a claimant can show “that she was required to perform work clearly antithetical to that for which she was initially employed,” or if she can show that “substandard working conditions were such that her affiliation with the hospital subjected her to professional sanction, criminal prosecution, or liability in tort,” then a case may be made where the claimant is eligible for unemployment benefits. *Id.* Here, as noted above, the claimant did not show how her license was allegedly jeopardized. Moreover, the claimant’s subjective feelings of being treated unfairly, without substantial evidence to show that they were true or reasonable, means that the claimant has not carried her burden, under G.L. c. 151A, § 25(e)(1).

Having concluded that the review examiner was correct to determine that the separation was disqualifying, we now move on to the main issue addressed by our remand order. In the original decision, the review examiner concluded the claimant would be subject to a full disqualification from the receipt of benefits, beginning January 31, 2016. However, the findings of fact indicate that the claimant’s job with the employer was part-time. This suggests that the claimant may be subject to a constructive deduction, pursuant to the provisions of 430 CMR 4.71–4.78.

A constructive deduction, rather than a full disqualification, will be imposed if a disqualifying separation from part-time work “occurs during the benefit year.” 430 CMR 4.76 provides, in relevant part, as follows:

(1) A constructive deduction, as calculated under 430 CMR 4.78, from the otherwise payable weekly benefit amount, rather than complete disqualification from receiving unemployment insurance benefits, will be imposed on a claimant who separates from part-time work for any disqualifying reason under M. G. L. c. 151A, § 25(e), in any of the following circumstances:

(a) If the separation is: . . .

2. if the separation from part-time work occurs during the benefit year; . . .

In this case, the claimant worked part-time for the employer from October 2, 2015, to January 19, 2016. Since the claimant had established an employment claim, effective December 20, 2015, the claimant separated from this employer in her benefit year.² Therefore, the claimant separated from a part-time job in her benefit year, and the regulation noted above is applicable.

A constructive deduction is defined as “the amount of remuneration that would have been deducted from the claimant’s weekly benefit amount . . . if the claimant had continued to be employed on a part-time basis.” 430 CMR 4.73. The amount of the constructive deduction each week is determined by the claimant’s earnings from the part-time employer. 430 CMR 4.78(1)(b) provides as follows:

On any separation from subsidiary part-time work after the establishment of a claim, the gross wages paid shall be divided by the number of weeks worked for the subsidiary part-time employer after the filing of a claim to determine the average part-time earnings.

In this case, the claimant’s work for the employer was subsidiary to other work she had in her base period. The review examiner found that while the claimant worked for the employer, she also worked for [Company A]. She was paid more for her work with [Company A], and she was eligible to work more hours per week. *See Consolidated Finding of Fact # 15.*

Since the work with this employer was subsidiary, *see* 430 CMR 4.74, the amount of the constructive deduction is calculated by dividing the number of weeks worked in the benefit year into the gross amount of the claimant’s benefit year earnings. Here, the claimant’s benefit year began on December 20, 2015. The review examiner found that the claimant was paid \$1,909.75 in 2016. *See Consolidated Finding of Fact # 64.* Although it is not entirely clear how much the claimant was paid from December 20 through December 31, 2015, the review examiner found that the claimant performed no work for [Company A] after November, 2015, but she earned \$862.50 during the week ending December 26, 2015. *See Consolidated Findings of Fact ## 12 and 14.*³ Since she had no other work during this period of time, the claimant must have earned the \$862.50 from the employer in this case. Thus, since the start of her claim, there is substantial evidence to conclude that the claimant earned (was paid) a total of \$2,772.25. Based on the findings, the claimant worked for four weeks in her benefit year (December 20, 2015 through January 16, 2016). Therefore, the claimant’s average weekly earnings were \$693.00, and this is the amount of the constructive deduction to be applied to the claimant’s claim.

² The “benefit year” is, generally speaking, the year following the effective date of an unemployment claim.

³ The \$862.50 figure is taken from the claimant’s weekly certification. *See Remand Exhibit # 7.* Although the review examiner found that the claimant was “paid” this amount, since the claimant is only to report what she earned each week, the \$862.50 is more accurately referred to as the claimant’s earnings for that week. However, since the \$862.50 was reported for the week ending December 26, 2015, it follows that the claimant had to have been paid that amount in her benefit year. Therefore, it counts as benefit year wages.

We, therefore, conclude as a matter of law that the review examiner's conclusion that the claimant quit her job under disqualifying circumstances is free from error of law. However, the conclusion that the claimant should be subject to a total disqualification from receiving benefits was an error of law, and we reverse that conclusion. The claimant should be subject to a constructive deduction.

The review examiner's decision is affirmed as to the separation issue under G.L. c. 151A, § 25(e)(1). However, we reverse the total disqualification from benefits. Beginning the week of January 31, 2016, the claimant shall be subject to a constructive deduction in the amount of \$693.00 each week, until she meets the re-qualifying provisions of the law.⁴

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 16, 2017



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

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.

SF/rh

⁴ 430 CMR 4.76(3) provides that the constructive deduction shall remain in effect unless an individual obtains new part-time work or returns to previously held part-time work. Several findings of fact indicate that the agency has approved the claimant for benefits, under G.L. c. 151A, §§ 29 and 1, for periods of time after the claimant's separation from the employer. See Consolidated Findings of Fact ## 72 and 73. These findings are somewhat puzzling, given that the claimant separated from this employer in January of 2016. The DUA may wish to investigate the claimant's claim further to see whether the constructive deduction should or should not be applied pursuant to 430 CMR 4.76(3).