

**Where the claimant quit because of a personality conflict with his supervisor, he did so for disqualifying reasons, pursuant to G.L. c. 151A, § 25(e)(1). However, since the separation was from part-time work obtained in the benefit year of his claim, the claimant is subject to a constructive deduction.**

**Board of Review  
19 Staniford St., 4<sup>th</sup> Floor  
Boston, MA 02114  
Phone: 617-626-6400  
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.  
Chairman  
Judith M. Neumann, Esq.  
Member  
Charlene A. Stawicki, Esq.  
Member**

**Issue ID: 0019 3347 09**

## **BOARD OF REVIEW DECISION**

### **Introduction and Procedural History of this Appeal**

The claimant appeals a decision by Allison Williams, a review examiner of the Department of Unemployment Assistance (DUA), to deny unemployment benefits beginning June 26, 2016. We review, pursuant to our authority under G.L. c. 151A, § 41. Although we affirm the conclusion that the claimant's separation from this employer was disqualifying, we also conclude that the claimant should be subject to a constructive deduction on his unemployment claim.

The claimant separated from his position with the employer on June 30, 2016. He then certified for benefits on a claim filed in 2015, which was effective December 20, 2015. On September 28, 2016, the DUA sent the claimant a determination, which provided that he was not eligible to receive benefits, beginning June 26, 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 November 2, 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, including whether, in the event that the separation from this employer was disqualifying, a constructive deduction, pursuant to 430 CMR 4.71–4.78, should apply. Both parties attended the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact. 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 subject to disqualification, 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 claimant had a personality conflict with his supervisor and told the human resource manager that he did not want to continue working with the supervisor; and (2) if the separation is disqualifying, whether a constructive

deduction should be applied to the claimant's unemployment claim, rather than a full disqualification.

### Findings of Fact

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

1. The claimant worked on the golf range for the employer, a country club, from 5/2/16 until he separated from the employer on 6/27/16.
2. The claimant was hired to work part time, 20 hours a week, earning \$12.00 an hour.
3. The claimant resigned during a conversation with the Human Resource Manager on 6/27/16. The claimant did not give advance notice.
4. The claimant left work because of a personality conflict with the Learning Center Supervisor.
5. The learning center at the country club had been opened for 14 days prior to the claimant's separation. The claimant had expressed concerns with his schedule to the Learning Center Supervisor in an email message dated 6/26/16. (Exhibit 11, page 2-3.) The claimant was open to [working] weekends and holidays and was only looking for 20 to 24 hours a week. The claimant had been filling shifts in outside operations working 30 to 35 hours a week until the Learning Center had opened. The claimant was hired to work first in outside operations until the employer's Learning Center opened, then he was to work 30-40 hours per week, weekdays, weekends and holidays, days and evenings. These were the conditions of employment the claimant accepted. (Exhibit 11, Page 1.)
6. The Learning Center Supervisor attempted to address the issue the claimant was having with his schedule, changing it to coincide with the claimant's requests. The claimant did not want to work Wednesdays or Sundays and to come in at 6 AM and work until 12 PM on the days he worked.
7. On 6/26/16, the Learning Center Supervisor informed the claimant via an email message that he was attempting to change the schedule to accommodate his requests.
8. Prior to this, the claimant had asked the Learning Center Supervisor for mosquito repellent. The Learning Center Supervisor advised the claimant that the country club does not provide mosquito repellent but that he could obtain and use his own mosquito repellent.

9. The Learning Center Supervisor would hold meetings on a daily basis in between shifts to keep employees informed of things going on at the country club. There were days that the claimant was not scheduled to work and did not attend the meetings but he was subsequently informed of what was discussed at the meetings he missed. At no time did the Learning Center Supervisor intentionally exclude the claimant from the group meetings.
10. The Learning Center Supervisor would communicate with all employees including the claimant via text messaging or by email. The Learning Center intended to purchase radios to be used between employees to communicate, but since the Learning Center had just opened, the radios had not been purchased. On 6/25/16, the claimant via a text message asked the Learning Center Supervisor not to text him on his day off when it was unnecessary. He also asked the Immediate Supervisor to spell his name correctly when he puts out communication. The claimant told the Supervisor in this text message that he has a book he thinks would be helpful for him called "29 leadership secrets from Jack Welch with Robert Slater." (Exhibit 10)
11. The claimant was dissatisfied with his Immediate Supervisor.
12. On 6/27/16, he visited the Human Resource Manager in her office. He informed her that he did not want to work at the Learning Center because of a personality conflict with the Learning Center Supervisor. The claimant did not want to discuss the issue he was having with the Learning Center Supervisor any further. He indicated that he would work the rest of the week, but, if she had other positions, he would be interested.
13. The Human Resource Manager informed the claimant that she was not sure if they had other positions outside the Learning Center and asked the claimant if there are no other positions available did he want to continue working in the Learning Center. The claimant indicated that he did not want to continue working in the Learning Center even if there were no other positions. He told the Human Resource Manager that he would finish out the week. The claimant informed her that he had a doctor's appointment on 6/30/16 but would be in after his appointment.
14. The Human Resource Manager subsequently informed the Learning Center Supervisor that the claimant wished to end his employment with the Learning Center.
15. The claimant was not scheduled to work on 6/28/16 and 6/29/16, as indicated on the new schedule created to accommodate the claimant's request.
16. On 6/30/16, the claimant came in to work after his doctor's appointment. The claimant informed the Learning Center Supervisor that he would work out the remainder of his week if necessary. The Learning Center Supervisor informed the claimant that he could have another employee take his shifts if he did not

want to work the remainder of the week. The claimant told the Supervisor that he did not want to work out the remainder of the week if it was ok with him. The claimant shook the Supervisor's hand and wished him well, quitting his position. (Exhibit 3, page 10)

17. The new employee was not hired to replace the claimant. He was an additional employee hired to work at the newly opened Learning Center.
18. There were no other positions available to the claimant at the time of his leaving.
19. Prior to his leaving, the claimant did not request a leave of absence. He never spoke to Human Resources or upper Management about his concerns with the Learning Center Supervisor. When asked by Human Resources if there were any issues, the claimant stated that he did not want to get into the issues and would leave it as a personality conflict.
20. The effective date of the claimant's 2015 unemployment claim is 12/20/15.
21. Under the claimant's 2015 unemployment claim, his benefit rate was \$219 and he had an earnings exclusion of \$73.
22. The claimant did not work for the instant employer ([Town A] Country Club) during the base period of his 2015 unemployment [claim,] which ran from 10/1/14 to 9/30/15. The claimant began employment with the instant employer 5/2/16 and his last physical day of work was on 6/27/16. The claimant separated on 6/30/16.
23. The total wages paid to the claimant from the instant employer was \$2,723.12 for the 2nd and 3rd quarters of 2016.
24. Since separating from [Town A] Country Club, the claimant had obtained new employment. The claimant began this new employment in October of 2016. The claimant was hired by the new employer to work 20 to 24 hours a week. He is currently out on medical leave from his new employment. The new employment is the only employment he has at this time.

**Credibility Assessment:** The claimant's contention that he was discharged is not deemed credible since the weight of the evidence suggests that the claimant left work due to a personality conflict with the Learning Center Supervisor. The claimant acknowledged at the remand hearing that he had in fact told the Human Resource Manager on 6/27/16 that if she did not have any other positions available outside the Learning Center for him to work he did not want to continue working in the Learning Center. In addition, both employer witnesses, the Human Resource Manager and the Learning Center Supervisor, testified that the claimant informed them he would work out the remainder of his last week of work. This statement by the claimant is not

conductive of someone who was being fired. Also, the claimant provided conflicting testimony when he testified at the initial hearing that the Learning Center Supervisor on 6/27/16 told him he had no more work for him and that he had gotten someone to replace him, whereas he subsequently testified that he had sent the Human Resource Manager an email dated 6/30/16 and where in the conversation he had with the Supervisor on 6/27/16, the claimant stated he would work out the rest of his shifts that week if the Supervisor needed him to, but they had spoken to the new employee who said he would cover the claimant shifts. (Exhibit # 3, Page 10)

Based on these findings, the employer's testimony of the events leading to the claimant's separation is credible and given more weight than that of the claimant's.

### 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, except for a date noted in Consolidated Finding of Fact # 1. The June 27, 2016, date conflicts with the review examiner's Consolidated Finding of Fact # 22, in which she found that the claimant separated on June 30, 2016. Based on the other findings, we conclude that the separation date is June 30, 2016. As discussed more fully below, we agree with the review examiner's legal conclusion that the claimant separated from his position under disqualifying circumstances, pursuant to G.L. c. 151A, § 25(e)(1). However, because the claimant's job with this employer was obtained in the benefit year of his 2015 unemployment claim, he is subject to a constructive deduction.

The parties disputed the underlying nature of the claimant's separation. The employer's witnesses offered testimony that suggested that the claimant quit or caused his separation when he informed the employer that he no longer wanted to work in the Learning Center with his supervisor. The claimant contended that he was replaced on June 30, 2016, and that the employer discharged him or at least caused his separation. After considering the testimony from both sides, the review examiner adopted a version of events more in line with the employer's testimony. The review examiner's credibility assessment notes that "the weight of the evidence suggests that the claimant left work due to a personality conflict with the Learning Center Supervisor." She further noted that the claimant's evidence regarding what his supervisor told him on June 30, 2016, conflicted with documentary evidence in the record. We conclude that the review examiner's credibility determination is reasonable based on the evidence presented to her. *See Dir. of Division of Employment Security v. Fingerman*, 378 Mass. 461, 463 (1979). Therefore, we will not disturb her substantive findings regarding the claimant's separation. We agree that, in the context of the other evidence, the claimant's acts of informing the employer that he would work out the week of June 26, 2016, and sending an e-mail on June 30 that he shook his supervisor's hand and "wished him well," are consistent with the claimant severing ties with the employer.

Since the claimant set in motion the events which eventually led to his separation, G.L. c. 151A, § 25(e)(1), is applicable. That section of law 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 he is eligible to receive unemployment benefits. The review examiner concluded that the claimant had not carried his burden to show that he separated for good cause attributable to the employer, and we agree.

The review examiner found that the claimant was hired to work part-time at the employer's country club. Although the claimant wanted to work 20 to 24 hours per week, the employer had been scheduling him for 30 to 35 hours per week. *See Consolidated Findings of Fact ## 2 and 5.* The claimant complained about his hours in late June, 2016, and his supervisor started to address those concerns. On June 26, 2016, the supervisor told the claimant that he was trying to adjust the schedules to accommodate the claimant. Consolidated Finding of Fact ## 6 and 7; Exhibits ## 9 and 11. Despite these efforts, the claimant informed the human resource manager on June 27, 2016, "that he did not want to work at the Learning Center because of a personality conflict with the Learning Center Supervisor." Consolidated Finding of Fact # 12.

The personality conflict appears to have stemmed not only from the scheduling issue, but also from other relatively minor conflicts between the claimant and his supervisor. For example, the claimant was upset about not attending some group meetings that were conducted on his day off. The claimant was also upset that he received a text message on his day off (because the employer had yet to purchase radios for the Learning Center staff). *See Consolidated Findings of Fact ## 9 and 10.*

Even if we take all of these circumstances together, we conclude, as the review examiner did, that the claimant has not shown good cause for leaving his employment. The claimant's working conditions were not intolerable or adversely affecting his health. *See Sohler v. Dir. of Division of Employment Security*, 377 Mass. 785, 789 (1979). The disagreements that the claimant had with his supervisor do not appear to have so significantly affected the working relationship that the claimant could not continue to do his work. *See DUA's Service Representatives Handbook* Section 1224(H) (noting that separation due to personality conflict should be treated as a voluntary separation, unless there was an "irreconcilable conflict that interfered with the work process"). Although some things seemed to have irked the claimant, his supervisor was trying to work with him to accommodate his needs. Nevertheless, the claimant did not give his supervisor a reasonable opportunity to address the claimant's concerns. This being so, we conclude that the claimant did not carry his burden to show that he separated from his position with the employer for good cause.

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 June 26, 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 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 most recently worked part-time for the employer from May 2, 2016 through June 27, 2016. Thus, the claimant began working for the employer in his benefit year.<sup>1</sup> Since the claimant separated from this part-time job in his benefit year, 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)(c) provides as follows:

On any separation from part-time work which is obtained after the establishment of a benefit year claim, the average part-time earnings will be computed by dividing the gross wages paid by the number of weeks worked.

In this case, the claimant performed nine weeks of work for the employer. *See* Finding of Fact # 1. The review examiner found that the claimant earned a total of \$2,723.12 for his work in those weeks. *See* Consolidated Finding of Fact # 23 and Remand Exhibit # 5, p. 2. Therefore, the claimant's average weekly earnings were \$302.56, and this is the amount of the constructive deduction to be applied to his claim.

We are aware that the constructive deduction amount of \$302.56 exceeds the claimant's benefit rate. *Compare* Finding of Fact # 21. The result is that the claimant will receive no benefits for the weeks following his separation from this employer. Effectively, then, the result for the claimant has not changed; he will still not be receiving benefits. However, pursuant to 430 CMR 4.76(3), if the claimant obtains part-time work in his benefit year, he will no longer be subject to

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<sup>1</sup> The “benefit year” is, generally speaking, the year following the effective date of an unemployment claim. For the claimant in this case, the benefit year began on December 20, 2015. *See* Consolidated Finding of Fact # 20.

the constructive deduction. This result is better for the claimant, because, if he were subject to a complete (rather than partial) disqualification, he could not requalify for any benefits until he worked for eight weeks and earned an amount equal to eight times his benefit rate. *See* G.L. c. 151A, § 25(e).

We, therefore, conclude as a matter of law that the review examiner's conclusion that the claimant quit his job under disqualifying circumstances is free from error of law. However, the conclusion that the claimant should be subject to a total disqualification 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 June 26, 2016, the claimant shall be subject to a constructive deduction in the amount of \$303.00 each week, until he meets the re-qualifying provisions of the law.<sup>2</sup>

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - May 10, 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](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.

SF/rh

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<sup>2</sup> *See* CMR 4.76(2) and (3).