

**Board of Review
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Issue ID: 0020 3427 70

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Nick Tsimortos, a review examiner of the Department of Unemployment Assistance (DUA), to deny the claimant benefits following his separation from employment on December 6, 2016. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm in part and reverse in part.

On April 4, 2017, the agency determined that the claimant was not entitled to unemployment benefits. The claimant appealed, and both parties attended the hearing. In a decision rendered on July 8, 2017, the review examiner affirmed the agency determination, concluding that the claimant voluntarily left employment without good cause attributable to the employer, or urgent, compelling, and necessitous reasons and, thus, was disqualified under G.L. c. 151A, § 25(e)(1). The Board accepted the claimant's application for review.

Ruling of the Board

After considering the recorded testimony from the hearing, the review examiner's decision, and the claimant's appeal, we conclude that the review examiner's findings of fact are based on substantial and credible evidence in the record. However, as discussed more fully below, we disagree with the review examiner's conclusion to deny benefits for the period from December 6, 2016 through December 31, 2016.

The findings and record before us indicate that, in March, 2016, the claimant advised the employer that he would be retiring by the end of the year. The claimant reminded the employer of his impending retirement throughout the year, and, in reliance on that, the employer undertook to find a potential replacement for the claimant. The record further establishes, however, that, during the claimant's notice period, on December 6, 2016, the employer discharged the claimant, gave him his final paycheck, and paid the claimant through the end of the year. We conclude that the employer's actions constituted a discharge within the meaning of G.L. c. 151A, § 25(e)(2). The employer has not, however, established that this discharge resulted from any deliberate and wilful misconduct on the claimant's part. Thus, we disagree with the review examiner's conclusion that the claimant should be disqualified beginning December 10, 2016. By ending the claimant's employment as of December 6, 2016, the employer was cutting short the claimant's employment involuntarily.

We, therefore, conclude that the claimant is eligible for benefits under G.L. c. 151A, § 25(e)(2), from the week ending December 10, 2016, through the remainder of his notice period, which was the week ending December 31, 2016, when the claimant had told the employer he was going to retire.

The review examiner's decision is affirmed in part and reversed in part. The claimant is denied benefits commencing with the week beginning January 1, 2017, and for subsequent weeks, until such time as he has had at least eight weeks of work and has earned an amount equivalent to or in excess of eight times his weekly benefit amount. The claimant is entitled to receive benefits for the four weeks ending December 10, 17, 24, and 31, if otherwise eligible.¹

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 29, 2017



Paul T. Fitzgerald, Esq.
Chairman



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Member

**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.

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¹ We note that this claimant's ultimate eligibility is uncertain given that the record indicates he was paid his salary through the end of the year.