

Claimant did not establish that she had urgent, compelling, and necessitous reasons to quit her part-time permanent job with the employer to accept a temporary, full-time summer job. However, she is subject to a constructive deduction and not a complete disqualification from benefits because her separation from the part-time job was during her benefit year.

**Board of Review
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Issue ID: 0021 7639 66

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The employer appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA), to award unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm in part and reverse in part.

The claimant resigned from her position with the employer on May 5, 2017. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on May 27, 2017. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner overturned the agency's initial determination and awarded benefits in a decision rendered on January 10, 2018. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant voluntarily left her employment for urgent, compelling, and necessitous reasons and, thus, was qualified for benefits 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 employer's appeal, we afforded the parties an opportunity to submit written reasons for agreeing or disagreeing with the decision. Neither party responded. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's decision, which concludes that the claimant had urgent, compelling, and necessitous reasons to quit her permanent part-time job with the employer, is supported by substantial and credible evidence and is free from error of law, where the findings of fact indicate that the claimant had quit her part-time job to accept full-time work that was temporary in nature.

Findings of Fact

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

1. The claimant worked part-time for the employer, a cleaning company, from November 28, 2016 to May 5, 2017 as a Cleaner.
2. The claimant's scheduled was Monday through Friday from 5:00 p.m. to 8:00 p.m.
3. The employment was subsidiary to the claimant's concurrent full-time job, which ended due to layoff on May 5, 2017.
4. On April 12, 2017, the claimant received an offer of full-time employment for the summer to begin on May 8, 2017 as a replacement to cover full-time staff on vacation.
5. On April 14, 2017, the claimant tendered her resignation effective May 5, 2017.
6. The claimant last worked on May 5, 2017 for the instant employer.
7. On May 7, 2017, the claimant learned that the impending full-time job will [sic] not take place due a change in vacations of the prospective employer's staff.
8. The claimant started new full-time work on August 21, 2017 and new subsidiary part-time work on September 6, 2017.

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 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 believe that the conclusion that the claimant had urgent, compelling and necessitous reasons to quit a permanent position with the employer for the purpose of taking a temporary summer job, was in error.

It is undisputed that the claimant quit her job, and thus, this case is governed by 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 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 . . . [or if] his reasons for leaving were for such an urgent, compelling and necessitous nature as to make his separation involuntary.

G.L. c. 151A, § 25(e), also provides that "[n]o disqualification shall be imposed if such individual establishes to the satisfaction of the commissioner that he left his employment in good faith to accept new employment on a permanent full-time basis, and that he became separated from such new employment for good cause attributable to the new employing unit."

First, we consider the latter provision. The findings provide that the claimant quit her part-time position with the employer to accept a new, full-time job. However, the full-time job was just for the summer. It was not a permanent, full-time job. Therefore, she is not eligible for benefits on this basis.

Next, we consider whether the review examiner's conclusion that the claimant left the employer's part-time job due to urgent, compelling, and necessitous circumstances was correct. Specifically, he concluded that she could not survive on her part-time fifteen hours a week wages and took an opportunity to accept a temporary full-time summer job. To be sure, the findings show that the claimant had a history of working both a full-time and part-time job. However, there is no evidence in the record to suggest circumstances of an urgent, compelling, or necessitous nature that rendered the claimant in any way unable to continue working part-time for the employer.

Our inquiry does not end here. When a claimant separates from subsidiary part-time employment, we must consider whether a constructive deduction, not a full disqualification, should apply. 430 CMR 4.76 provides, in relevant part, the following:

(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:

1. from subsidiary, part-time work during the base period and, at the time of the separation, the claimant knew or had reason to know of an impending separation from the claimant's primary or principal work; or
2. if the separation from part-time work occurs during the benefit year; . . .

The findings show that the claimant separated from the employer's part-time job on May 5, 2017, which is the effective date of her unemployment claim and the first day of her benefit year. Since she separated from part-time work during the benefit year, she is subject to a constructive deduction under 430 CMR 4.76(1)(a)2.¹

We, therefore, conclude as a matter of law that the claimant did not have good cause attributable to the employer or urgent, compelling, and necessitous reasons, pursuant to G.L. c. 151A, § 25(e), when she quit her permanent position with the employer to accept a temporary summer job. We further conclude that the claimant is subject to a constructive deduction, rather than a complete disqualification from benefits pursuant to 430 CMR 4.76(1)(a).

¹ We think the claimant would also qualify for a constructive deduction under 430 CMR 4.76(1)(a)1. The DUA's electronic record-keeping system, UI Online, shows that the claimant worked for both of these employers during her base period. We can reasonably infer that, on April 14, 2017, when she submitted her resignation to the employer in order to take the summer position, she knew of her impending layoff from her regular, concurrent, full-time job. We infer this based upon the assumption that the claimant was not planning to work two full-time jobs over the summer.

The review examiner's decision is affirmed in part and reversed in part. We reverse the portion of the review examiner's decision that concluded the claimant is eligible for benefits under G.L. c. 151A, § 25(e). However, the claimant is not subject to a complete disqualification from benefits. Her weekly benefit amount is subject to a constructive deduction, as calculated under 430 CMR 4.78, beginning the week of May 5, 2017, and for subsequent weeks until she has had eight weeks of work and in each of those weeks has earned an amount equivalent to or in excess of her weekly benefit, or returns to part-time work. *See* 430 CMR 4.76(3).



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 31, 2018



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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.

SPE/rh