

**A claimant, who quit her part-time, benefit year position with her employer to attend training, and who thereafter received approval pursuant to G.L. c. 151A, § 30, is subject to a constructive deduction, because she left benefit year employment to attend school and the effective date of her Section 30 approval is after the date of her resignation.**

**Board of Review  
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**Issue ID: 0023 1390 40**

## **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), which concluded that the claimant is subject to a constructive deduction of \$143.00 per week, effective November 27, 2016. 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 December 2, 2016. She then continued certifying for benefits on a claim effective September 4, 2016. On October 19, 2017, the DUA sent the claimant a Notice of Disqualification, informing her that she was subject to the disqualifying provisions of G.L. c. 151A, § 25(e)(1), but that she would only be subject to a constructive deduction of \$143.00 per week, beginning January 1, 2017. 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 DUA's determination that the claimant was subject to a constructive deduction but altered the start date of that deduction from January 1, 2017, to November 27, 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). However, because the separation was from a part-time job obtained in the claimant's benefit year, she would be subject to a constructive deduction rather than a total disqualification from the receipt of benefits. 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 testimony regarding whether the claimant quit her position to attend an approved training course and whether the amount of the constructive deduction was correct. 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 decision, which concluded that the claimant is subject to disqualification under G.L. c. 151A, § 25(e)(1), is supported by

substantial and credible evidence and is free from error of law, where the claimant quit her position to attend a full-time school program prior to being approved to attend the program by the DUA under G.L. c. 151A, § 30(c); and (2) if the separation is disqualifying, whether the claimant should be subject to a constructive deduction.

### Findings of Fact

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

1. The claimant filed an unemployment claim with an effective date of 09/04/2016 and a benefit year end of 09/02/2017 (claim ID 2016-01). During the base period of her 2016-01 claim (07/01/2015 to 06/30/2016), the claimant worked for one employer (employer A) and earned total gross wages of \$22,204.21. The Department of Unemployment Assistance determined the claimant's weekly benefit amount to be \$229.00, with an earnings disregard of \$76.33.
2. During her benefit year, the claimant began new part time employment on 10/03/2016 with the instant employer as a homemaker companion.
3. The claimant earned \$11.00 per hour and worked a varied schedule of ten (10) to twenty (20) hours per week.
4. The claimant resigned from employment with the instant employer effective 12/02/2016 because she was beginning a full time condensed school program in January, 2017, and was not available to work ten (10) to twenty (20) hours per week with her anticipated school schedule.
5. The claimant worked for the instant employer in every week between 10/03/2016 and 12/02/2016.
6. The claimant earned total gross wages of \$714.17 during the 4th quarter 2016 and \$78.23 during the 1st quarter 2017 for the instant employer. The claimant's total gross wages earned with the instant employer during her employment was \$792.40.
7. The claimant submitted a Training Opportunities Program (Section 30) application to the DUA with a postage meter stamp date of 01/17/2017, received in an interoffice envelope in the special program department on 02/21/2017.
8. On 08/01/2017, the DUA issued the claimant a "Redetermination Notice of Approval" on her 2016-01 claim pursuant to Section 30 of the Law for issue ID 0021 1277 51. This notice stated that the claimant was "eligible to receive up to 26 weeks times your weekly benefit rate in additional benefits while attending the full-time program. In addition, you have been granted a waiver

- of the work search requirements.” This redetermination notice specifically referred to “Ross Education, Medical Assisting Certificate, start date 01/09/2017 (approved as of application postmark date of 01/17/2017), completion date 06/02/2017” and revised completion date 10/06/2017.
9. On 08/01/2017, the DUA issued the claimant a “Notice of Approval” on her 2016-01 claim pursuant to Section 30 of the Law for issue ID 0022 3974 07. This notice stated that the claimant’s “request to extend her school or training approval end date was for good cause and is granted.” The notice specifically granted the claimant’s extension for her training program to end date 10/06/2017.
  10. The claimant filed an unemployment claim with an effective date of 09/10/2017 and a benefit year end of 09/08/2018 (claim ID 2017-01).
  11. On 12/05/2017, the DUA issued the claimant “Hearings Appeal Results” on her 2016-01 claim pursuant to Section 30 of the Law for issue ID 0023 0603 63. This decision concluded that the “[p]rogram failed to secure [the claimant] a required externship through no fault of her own. As a result, it is concluded the claimant established (sic) good cause for an extension of her end date so that she may complete the Program for which she was approved. The claimant is entitled to benefits while attending the Program.” The claimant’s required externship placement would be completed on 11/21/2017.
  12. On 11/11/2017, the DUA issued the claimant a “Notice of Approval” on her 2017-01 claim pursuant to Section 30 of the Law for issue ID 0023 5382 41. This notice stated that the claimant was “eligible to receive up to 26 weeks times your weekly benefit rate in additional benefits while attending the full-time program. In addition, you have been granted a waiver of the work search requirements.” This notice specifically referred to “Ross Education LLC, Medical Assisting Certificate, Course ID # 1009504, claim effective date 09/10/2017, completion date 11/21/2017.”

### Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the consolidated findings are supported by substantial and credible evidence; and (2) whether the review examiner’s original 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 affirm much of the review examiner’s decision. However, we modify the amount of the constructive deduction to be applied to the claimant’s unemployment claim.

It was undisputed that the claimant resigned her position with the employer. She had worked for the employer for approximately two months before quitting, effective December 2, 2016. G.L. c. 151A, § 25(e), 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 . . . [or] if such individual established to the satisfaction of the commissioner that his reasons for leaving were for such an urgent, compelling and necessitous nature as to make his separation involuntary.

Under these statutory provisions, the claimant has the burden to show that she is eligible to receive unemployment benefits. In her decision, the review examiner concluded that the claimant did not carry her burden.

The review examiner found that the claimant “resigned from employment . . . because she was beginning a full time condensed school program in January, 2017, and was not available to work . . . with her anticipated school schedule.” Consolidated Finding of Fact # 4. Although it may have been the best personal decision for the claimant to make at the time, her decision to attend school does not represent good cause attributable to the employer for resigning her position.<sup>1</sup> This principle is well-established and accepted. *See* DUA Service Representative Handbook Section 1207(A). Thus, the claimant’s separation from the employer was a disqualifying one under G.L. c. 151A, § 25(e)(1).

We remanded this matter to the review examiner to have her take additional evidence as to whether a different section of law applied in the claimant’s situation. G.L. c. 151A, § 25(e) provides the following:

An individual in partial unemployment who leaves work from other than the most recent base period employer while receiving benefits under this chapter shall not be disqualified pursuant to the provisions of this subsection from receiving benefits, if such individual establishes to the satisfaction of the commissioner that the reason for leaving was to enter training **for which the individual has received the commissioner’s approval under section thirty.** (Emphasis added.)

Here, the claimant was working part-time in her benefit year after separating from her base period employer. *See* Consolidated Findings of Fact ## 1–3. As noted above, there is no dispute that the claimant quit her position to “enter training,” or schooling. The question is how to interpret the final part of the quoted section.

The claimant maintained in her appeal to the Board and during the remand hearing that she was enrolled in school in September of 2016. However, the language of the statute is clear. It applies to persons who have “received the commissioner’s approval under section thirty.” Enrolling in a course is not enough. The review examiner found that the claimant first submitted a training application on January 17, 2017, after she separated from her job with this employer. Therefore, we cannot conclude that the claimant quit her job with this employer to enter training “for which she has received the commissioner’s approval under section thirty.”

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<sup>1</sup> Similarly, choosing to attend school is not an urgent, compelling, and necessitous reason under G.L. c. 151A, § 25(e).

We decline to hold that the above-cited statute could apply to a person in the claimant's circumstances. We have applied the statute where claimants have quit the part-time, benefit year position either already having received approval or already having applied for approval (such that when the agency eventually approves the course, the approval would be retroactive to a time before the separation). In Board of Review Decision 0008 9742 34 (June 12, 2014), the claimant quit a part-time position on March 20, 2013. Subsequently, he was approved under G.L. c. 151A, § 30, to attend an approved training course. However, the approval was effective March 17, 2013. Given these facts, the Board applied the above-cited section of law and concluded that the claimant was not subject to disqualification. In Board of Review Decision 0012 8506 53 (February 25, 2015), the claimant received approval under G.L. c. 151A, § 30, on June 19, 2013, to attend training which began in September of 2013. The claimant quit her part-time position on August 13, 2013, after she had obtained the approval.<sup>2</sup> In Board of Review Decision 0016 1648 59 (December 28, 2015), a claimant submitted his training application for approval on January 14, 2015, prior to starting full-time schooling in February of 2015. In early March of 2015, the claimant quit a part-time job which he had worked for approximately a week or so, because it was too much for him to do with his full-time school schedule. On May 1, 2015, the DUA approved the claimant's training application, retroactive to February 2, 2015, when he began his training. In each case, the agency's approval was effective *prior to* the date of the claimant's separation from employment. Here, the agency's approval, which is effective January 17, 2017, was after the claimant quit her position. Therefore, she is not eligible to receive benefits under the provision noted above.<sup>3</sup> The claimant is subject to the disqualifying provisions of G.L. c. 151A, § 25(e)(1), because she quit her position without showing good cause attributable to the employer or an urgent, compelling, and necessitous reason.

Having concluded that the review examiner was correct to determine that the separation was disqualifying, we now move on to the constructive deduction issue. In the original decision, the review examiner concluded the claimant would be subject to a constructive deduction of \$143.00 per week, beginning November 27, 2016.

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:

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<sup>2</sup> Board of Review Decisions 0008 9742 34 and 0012 8506 53 are an unpublished decision, available upon request. For privacy reasons, identifying information is redacted

<sup>3</sup> The claimant maintained at several different points in this administrative process that she was told that she could work part-time and collect benefits while she was waiting to start school. She asserts that she relied on this when she took her benefit year, part-time job. She received correct information from the DUA. A person can work part-time while collecting unemployment benefits; however, she cannot earn over her benefit rate. *See* G.L. c. 151A, §§ 29(b) and 1(r)(1). The question here is not with her obtaining new employment. It is with her separation from that employment.

- (a) If the separation is: . . .
- 2. if the separation from part-time work occurs during the benefit year . . . .

In this case, the claimant's unemployment claim was effective September 4, 2016. Consolidated Finding of Fact # 1. The claimant worked part-time for the employer from October 3, 2016, through December 2, 2016. Thus, the claimant began working for the employer in her benefit year.<sup>4</sup> Since the claimant separated from this part-time job in her 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. Consolidated Finding of Fact # 5. The review examiner found that the claimant earned a total of \$792.40 for her work in those weeks. *See* Consolidated Finding of Fact # 6. Therefore, the claimant's average weekly earnings were \$88.00, and this is the amount to be applied to the claimant's claim each week she certified for benefits.<sup>5</sup>

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. Moreover, her conclusion that a constructive deduction was applicable was also correct; however, the amount of the deduction must be modified as noted above.

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<sup>4</sup> The "benefit year" is, generally speaking, the year following the effective date of an unemployment claim.

<sup>5</sup> This amount is treated as earnings and is subject to the earnings disregard provided for in G.L. c. 151A, § 29(b). *See* 430 CMR 4.78(2).

The review examiner's decision is affirmed as to the separation issue under G.L. c. 151A, § 25(e)(1). However, we reverse the amount of the constructive deduction. Beginning the week of November 27, 2016, earnings of \$88.00 per week shall be attributable to the claim. The constructive deduction shall remain in effect until the claimant meets the requalifying provisions of the law. She may receive the unemployment benefits only if she is otherwise eligible under G.L. c. 151A.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - July 30, 2018**



Paul T. Fitzgerald, Esq.  
Chairman



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](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