

Claimant is not subject to a constructive deduction due to leaving a part-time benefit year job, because she left to attend a Section 30-approved training program.

**Board of Review
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Issue ID: 0023 5991 97

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) to deny unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant separated from employment and became eligible for benefits, effective October 30, 2016. During her benefit year, she obtained part-time employment with the employer and resigned on August 31, 2017. As a result of this separation, the DUA imposed a construction deduction penalty to claimant's weekly unemployment benefits in a determination issued on November 28, 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 agency's determination in a decision rendered on January 20, 2018. We accepted the claimant's application for review.

The claimant's weekly benefit amount was reduced with a constructive deduction penalty because the review examiner determined that the claimant had voluntarily left her part-time benefit year job without having good cause attributable to the employer, and, thus, her separation was disqualifying under G.L. c. 151A, § 25(e)(1). Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal.

The issue before the Board is whether the review examiner's conclusion that the claimant is disqualified from receiving her full weekly benefit amount pursuant to 430 CMR 4.76(1), is supported by substantial and credible evidence and is free from error of law, where the record shows that the reason she separated was in order to attend a training program approved under G.L. c. 151A, § 30(c) (Section 30 training).

Findings of Fact

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

1. On 11/02/16, the claimant filed a claim for unemployment benefits with an effective date of 10/30/16.
2. In February 2017, the claimant enrolled in a full time Practical Nursing Program at Holyoke Community College.
3. The claimant started part time work as a certified nursing assistant for the instant employer, a home care service for the elderly on 03/17/17 and worked until 08/31/17.
4. Upon hire, the claimant made the employer aware that she had applied to the nursing program.
5. In April 2017, the claimant found out that she was accepted into the program. The program was scheduled to start on 09/03/17.
6. The employer advised the claimant that in order to remain employed, she would have to work a minimum of 10 hours a week.
7. The claimant was advised by the school not to work while attending the nursing program if possible because it was a very rigorous program.
8. On 08/25/17, the claimant emailed the employer that the next week would be her last week.
9. On 08/31/17, the claimant emailed the employer her final timesheets and said that she would contact the employer if she found that she would be able to pick up the 10 hours.

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. After such review, the Board adopts the review examiner's findings of fact except as follows. The implication in Finding of Fact # 2 that the claimant started attending her nursing program in February, 2017, is unsupported, as the claimant did not begin the school program until September, 2017. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant's separation from the employer was disqualifying or rendered her subject to a constructive deduction penalty.

The DUA's constructive deduction regulations under 430 CMR 4.76 provide, 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 a 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)

The review examiner concluded that the claimant was disqualified under G.L. c. 151A, § 25(e)(1), on the ground that leaving her part-time benefit year job to go to school did not constitute good cause attributable to the employer to resign. In doing so, the review examiner failed to consider a separate provision under G.L. c. 151A, § 25(e), which states:

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.

The claimant started her part-time job with the employer during her benefit year. Finding of Fact # 3. The DUA's electronic record-keeping system shows that this was not a base period employer and that while working in this part-time job, the claimant collected partial unemployment benefits. As the review examiner concluded, the claimant's reason for leaving this part-time job was to go to school. However, the claimant's school program was approved for Section 30 benefits.¹ Since the claimant's reason for leaving was to enter a Section 30 training program, the provision under G.L. c. 151A, § 25(e), set forth above, precludes imposing a disqualification under G.L. c. 151A, § 25(e)(1).

We, therefore, conclude as a matter of law that the claimant is not subject to a constructive deduction penalty pursuant to 430 CMR 4.76, because her separation was not disqualifying under G.L. c. 151A, § 25(e).

¹ See Board of Review Decision 0020 8468 94 (Nov. 9, 2017), entered into the record as Exhibit # 6. The Board's decision rendered the claimant eligible for Section 30 benefits beginning September 5, 2017.

The review examiner's decision is reversed. The claimant is entitled to receive her full weekly benefit amount for up to 26 weeks while participating in her Section 30 training program, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 20, 2018



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
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.

AB/rh