

**Board of Review
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Member
Michael J. Albano
Member**

Issue ID: 0024 3953 62

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

The agency initially determined, on February 15, 2018, that the claimant was not entitled to unemployment benefits. The claimant appealed and both parties attended the hearing. In a decision rendered on April 25, 2018, the review examiner affirmed the agency's determination, concluding 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). The Board accepted the claimant's application for review.

Ruling of the Board

After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we conclude that the review examiner's determination that the claimant's separation from employment was disqualifying is based on substantial evidence and is free from any error of law affecting substantive rights. However, because this was part-time benefit year employment, the disqualifying separation did not render the claimant ineligible for her entire weekly benefit amount. The claimant is merely subject to a constructive deduction, rather than a complete denial of benefits. *See* 430 CMR 4.76(1)(a)(2).

We affirm that part of the review examiner's decision, which concluded that the claimant's separation from the employer was disqualifying under G.L. c. 151A, § 25(e)(1). We reverse the portion of the decision, which subjected the claimant to more than a constructive deduction from her weekly benefit rate as of the week ending January 6, 2018. The constructive deduction here will be the claimant's average weekly wage of \$239.23, which we calculated using the totality of the evidence in the record indicating that the claimant earned a total of \$5,502.25 during the 23 weeks that she worked for the instant employer during the benefit year. *See* 430 CMR 4.78(1)(c).

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 31, 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

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.

SVL/rh