

**Claimant separated from the instant employer on December 27, 2017. She was awarded benefits effective January 13, 2018, and received benefits for six weeks thereafter. The claimant returned to work and separated from another employer in March 2020. Because the claimant was paid benefits on January 13, 2018, the DUA is deemed to have issued its original determination on or before that date. This rendered the decision that occurred in August 2020 reversing the original determination time-barred under G.L. c. 151A, § 71.**

**Board of Review  
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**Issue ID: 0024 4652 34**

#### 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 her position with the employer on December 29, 2017. She filed a claim for unemployment benefits with the DUA, effective December 31, 2017, (the 2018-01 claim) which was approved in a determination issued on May 12, 2020. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the employer, the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on August 8, 2020. We accept the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant failed to show that she resigned voluntarily with good cause attributable to the employer or involuntarily for urgent, compelling, and necessitous reasons and, thus, was disqualified 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 issues before the Board are: (1) whether the review examiner's decision, which concluded that the claimant left work voluntarily without good cause attributable to the employer or for urgent, compelling, and necessitous reasons, is supported by substantial and credible evidence and is free from error of law; and (2) whether this disqualification has been imposed beyond the statutory period under G.L. c. 151A, § 71.

#### Findings of Fact

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

1. The claimant worked as an assembler for the employer, a temporary employment agency, from 7/5/17 until she separated from the employer on 12/29/17.
2. The claimant was hired to work full time, Monday through Friday from 12 a.m. to 6 a.m., earning \$20.70 an hour.
3. When hired the employer gave the claimant written information informing her that once her assignment ended she needed to contact the employer for another assignment.
4. The claimant completed her last assignment. The client ended the assignment on 12/29/17 because work was slow.
5. The claimant did not contact the employer for reassignment after being let go on 12/29/17. It is not known why she did not contact the employer for more work. The claimant quit her job.
6. The employer would have had work available to the claimant if she had not quit.

### 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. We further believe that the review examiner's conclusion that the claimant's separation was disqualifying under G.L. c. 151A, § 25(e)(1), is free from error of law. However, as discussed more fully below, we reverse the review examiner's decision because this redetermination of her eligibility for benefits is time-barred under G.L. c. 151A, § 71.

Because the claimant resigned from her job, the review examiner properly analyzed her eligibility for benefits under 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] . . . (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 of such an urgent, compelling and necessitous nature as to make his separation involuntary.

The explicit language in G.L. c. 151A, § 25(e)(1), places the burden of persuasion on the claimant. Cantres v. Dir. of Division of Employment Security, 396 Mass. 226, 230 (1985). Nothing in the record suggests that the claimant left as a direct result of any action taken by the employer, or that urgent, compelling, and necessitous circumstances caused her to resign. Therefore, we concur

with the review examiner's conclusion that the claimant did not leave voluntarily with good cause attributable to the employer or for urgent, compelling, and necessitous reasons.

After the claimant filed the instant claim for benefits on December 31, 2017, she received six weeks of benefits beginning the week ending January 13, 2018.<sup>1</sup> The review examiner's 2020 decision imposed a disqualification for the week beginning December 24, 2017, and until the claimant had eight weeks of work and earned an amount equivalent to or in excess of eight times her weekly benefit amount. As a result of this decision, the claimant now must repay six weeks of benefits that she collected under her 2018-01 claim. Since the redetermination on appeal was issued more than two and a half years after the claimant began receiving benefits, we must consider whether the redetermination was timely.

The DUA's authority to redetermine eligibility for benefits is temporally limited by G.L. c. 151A, § 71, which provides, in relevant part, as follows:

The commissioner may reconsider a determination whenever he finds that (1) an error has occurred in connection therewith; or (2) wages of the claimant pertinent to such determination but not considered in connection therewith have been newly discovered; or (3) benefits have been allowed or denied or the amount of benefits fixed on the basis of misrepresentation of fact; provided, however, that with respect to (1) and (2) no such redetermination shall be made after one year from the date of the original determination; and provided, further, that with respect to (3) no such redetermination shall be made after four years from the date of the original determination . . . .

In considering whether the review examiner's decision was timely under this section of law, we must first ascertain the date the original determination was made. Exhibit 7 is a Notice of Approval dated May 12, 2020, based upon the claimant's separation from the instant employer.<sup>2</sup> Nothing in the record or the DUA's UI Online system shows that an earlier Notice of Determination had been issued under this 2018-01 claim. However, the DUA paid her benefits under this claim beginning the week ending January 13, 2018.

Upon the filing of a claim, the DUA must determine whether or not a claim is valid.<sup>3</sup> The DUA will authorize the payment of unemployment benefits upon a minimum showing that a claimant earned sufficient qualifying wages during the base period,<sup>4</sup> and the claimant separated from employment for qualifying reasons.<sup>5</sup> Since there is no documentary record of an earlier determination, we deem the original determination finding the claimant eligible for benefits to have been made on or just prior to the week ending January 13, 2018.

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<sup>1</sup> We obtained this information from the DUA's electronic record-keeping system, UI Online.

<sup>2</sup> We have supplemented the findings of fact, as necessary, with the documentary evidence admitted into the record by the review examiner. See Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

<sup>3</sup> G.L. c. 151A, § 39(a).

<sup>4</sup> G.L. c. 151A, § 24(a).

<sup>5</sup> G.L. c. 151A, § 25(e).

Because nothing in the record suggests a misrepresentation of fact, G.L. c. 151A, § 71, mandates that the DUA had only a one-year period to reconsider this award of benefits. The decision before us was issued on August 8, 2020, approximately 30 months after the one-year period had elapsed.

We, therefore, conclude as a matter of law that the review examiner's decision under G.L. c. 151A, § 25(e)(1), is supported by substantial evidence and free from error of law. However, we further conclude that her decision, which redetermines the original award of benefits under her 2018-01 claim based upon her separation from this employer, is time-barred under G.L. c. 151A, § 71.

The review examiner's decision is reversed. The claimant is entitled to receive benefits beginning December 31, 2017, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald,

**BOSTON, MASSACHUSETTS**

Esq.

**DATE OF DECISION - September 10, 2020**

Chairman



Michael J. Albano

Member

Member Charlene A. Stawicki, Esq. did not participate in this decision.

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS  
STATE DISTRICT 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.

LSW/jv