

Claimant separated from her employer in March, 2018 and was paid benefits. In June, 2020, the DUA determined that the claimant was ineligible for benefits on the grounds that this separation was disqualifying under G.L. c. 151A, § 25(e). This determination was upheld after a hearing. Board held that, pursuant to G.L. c. 151A, § 71, the DUA was without authority to disqualify her more than two years later, and therefore, the claimant remained eligible for benefits.

**Board of Review
19 Staniford St., 4th Floor
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member
Michael J. Albano
Member**

Issue ID: 0025 6170 33

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 initially filed an unemployment claim, effective December 3, 2017, while on a leave of absence, and was approved for benefits. She resigned from her position with the employer on March 2, 2018, and subsequently received further benefits under that claim. However, in a determination issued on June 17, 2020, the DUA disqualified the claimant beginning the week ending March 3, 2018, and required her to repay the benefits received after that date. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the claimant¹, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on April 9, 2022. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment without having good cause attributable to the employer or urgent, compelling, and necessitous reasons and, thus, she was disqualified under G.L. c. 151A, § 25(e)(1). We need not decide whether the review examiner's decision was correct, because the underlying determination was time-barred pursuant to G.L. c. 151A, § 71.

The unemployment statute imposes time limits on the DUA's authority to redetermine eligibility for benefits. G.L. c. 151A, § 71, 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

¹ The claimant's former employer was invited to participate in the hearing as a witness only but did not attend.

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

(Emphasis added.)

The DUA is prohibited from paying benefits without first determining that the claimant separated for qualifying reasons. *See* G.L. c. 151A, § 25(e). In this case, the claimant was initially awarded benefits immediately following this separation from employment, beginning the week ending March 3, 2018. By issuing that payment, the DUA is deemed to have determined that the claimant’s separation from the employer was qualifying under G.L. c. 151A, § 25(e). This means that the DUA’s June 17, 2020, determination was actually a redetermination. Since nothing in the record or in the DUA’s electronic record-keeping system, UI Online, indicates that those benefits were paid based upon a misrepresentation of fact, the DUA had one year within which it could redetermine her eligibility for benefits. Here, the DUA’s determination disqualifying her based upon that separation was issued more than two years later. Pursuant to G.L. c. 151A, § 71, the agency did not have authority to do so.

The review examiner’s decision is reversed. The claimant is entitled to receive benefits for the week ending March 3, 2018, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - June 27, 2022



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

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