

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

Issue ID: 0029 5143 65

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 the claimant benefits following his separation from employment on December 31, 2018. 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 April 10, 2019, that the claimant was entitled to unemployment benefits. The employer appealed and both parties attended the hearing. In a decision rendered on May 18, 2019, the review examiner reversed 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 initially dismissed the claimant's application for review, but subsequently revoked the dismissal on June 25, 2019, because it learned through the DUA electronic record keeping system, UI Online, that the claimant had other employment during the base period of his claim which affects his eligibility for benefits. This additional employment should have been considered in the Board's review of the claimant's appeal.

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 under G.L. c. 151A, § 25(e)(1), is based on substantial evidence and is free from any error of law affecting substantive rights. However, because this was part-time subsidiary employment during the base period of the claim, the disqualifying separation did not render the claimant ineligible for his entire weekly benefit amount.¹ The claimant is subject to a constructive deduction, rather than a complete denial of benefits pursuant to 430 CMR 4.76(1)(b).

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). However, we reverse the portion of the decision which subjected the claimant to more than a constructive deduction from his weekly benefit rate as of the week ending January 5, 2019. The constructive

¹ We take administrative notice of the information in UI Online, which shows that the claimant had other employment during the base period of his claim that affects his eligibility for benefits.

deduction here will be the claimant's average weekly wage of \$413.35, which we calculated using his gross wages of \$5,373.49 with the instant employer during his last completed quarter prior to filing his unemployment claim. *See* 430 CMR 4.78(1)(a).²

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 18, 2019



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

² UI Online also contains information regarding the claimant's earnings during the base period.