

**Because the claimant left her job with the employer to accept new, permanent, full-time work with another dental office, then separated under qualifying circumstances, she is eligible for unemployment benefits pursuant to G.L. c. 151A, § 25(e). Pursuant to 430 CMR 5.05(4), her benefits may be charged to the solvency account, not to the employer account.**

**Board of Review  
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Chairman  
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Member  
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**Issue ID: 0031 6797 35**

## **BOARD OF REVIEW DECISION**

### **Introduction and Procedural History of this Appeal**

The employer appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to award the claimant benefits following her separation from employment. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On September 25, 2019, the agency initially determined that the claimant was not entitled to unemployment benefits. The claimant appealed and both parties attended the hearing. In a decision rendered on November 23, 2019, the review examiner reversed the agency determination, concluding that the claimant had quit her position with the employer to accept new full-time, permanent employment with a new employer and, thus, she was not disqualified under G.L. c. 151A, § 25(e). The Board accepts the employer's application for review.

### **Findings of Fact**

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

1. In April 2018, the claimant applied to work for the instant employer, a periodontal dental office, after she viewed its online advertisement for full time employment.
2. In August 2018, the claimant interviewed with the Owner and the Office Manager. During the interview, the claimant was informed the position was part-time with the potential of full-time employment when the Office Manager retired.
3. The claimant believed that the Office Manager was scheduled to retire in February 2019.
4. The claimant was offered and accepted the position with the instant employer.

5. At the time the claimant accepted employment, she received \$1,200 a month in child support.
6. The claimant accepted the position with the instant employer under the impression that the Office Manager was going to retire in February 2019, she would be offered full-time employment at that time and she was receiving child support to supplement her income.
7. The claimant worked as a dental office coordinator for the instant employer from September 6, 2018, until June 13, 2019.
8. The claimant earned \$25.00 per hour with the instant employer.
9. The claimant's immediate supervisors were the Owner and the Office Manager.
10. The claimant worked a set schedule, Tuesday, from 8 a.m. to 5 p.m.; and Thursday, from 10 a.m. to 7 p.m.
11. In September 2018, the claimant's ex-husband became unemployed and filed a modification of child support.
12. In December 2018, the claimant's child support was reduced from \$1,200 a month to \$600 a month.
13. After December 2018, the claimant had difficulty affording her rent.
14. In February 2019, the Office Manager did not retire.
15. When the Office Manager did not retire, the claimant remained employed part-time and began to look for full-time employment.
16. Around June 4, 2019, the claimant was offered employment with a New Employer, a dental office.
17. The New Employer job offered the claimant \$25.00 per hour.
18. The New Employer position was permanent and full-time, 35 to 40 hours a week.
19. The claimant accepted the position the New Employer offered to her with a start date of June 17, 2019.
20. On June 4, 2019, the claimant told the Owner that June 13, 2019 would be her last day.

21. On June 13, 2019, the claimant worked her last day with the instant employer.

22. On June 13, 2019, the claimant began working with the New Employer.

23. On July 17, 2019, the claimant separated from the New Employer.

### Ruling of the Board

After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the employer's appeal, we conclude that the review examiner's findings of fact are supported by substantial and credible evidence in the record. We also believe that the decision to award benefits is free from any error of law affecting substantive rights.

The claimant is eligible for benefits based on language in G.L. c. 151A, § 25(e), which provides, in relevant part, the following:

No disqualification shall be imposed if such individual establishes to the satisfaction of the commissioner that he left his employment in good faith to accept new employment on a permanent full-time basis, and that he became separated from such new employment for good cause attributable to the new employing unit.

Although not addressed by the review examiner in her decision, DUA records confirm that, after the claimant began work in June, 2019, with her new employer, she was separated from that employment approximately one month later for non-disqualifying reasons. Ultimately, the claimant filed for benefits based on her separation from the new employer.

We, therefore, conclude as a matter of law that the claimant is eligible for benefits under G.L. c. 151A, § 25(e).

Because the claimant quit her job with the employer to accept new, permanent, full-time employment with another employer, 430 CMR 5.05(4), which relates to how charges should be allocated when the above statutory provision applies, may be applicable. 430 CMR 5.05(4), states the following:

With respect to any claim filed, if any base period employer shall show to the satisfaction of the commissioner that the worker became separated from his last employment with such employer solely for the purpose of accepting work with another employing unit by which he had been hired, charges with respect to benefits paid to such a worker shall not be chargeable to such employer's account but shall be charged to the solvency account.

The employer should contact the agency if it has any questions as to how this regulation could apply to charges related to the claimant's unemployment claim.

The review examiner's decision is affirmed. The claimant is eligible for benefits for the week beginning June 9, 2019, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION – December 23, 2019**



Charlene A. Stawicki, Esq.  
Member



Michael J. Albano  
Member

Chairman Paul T. Fitzgerald, Esq. 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](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.

CAS/rh