

Because the claimant had more than eight weeks of work with a new employer after separating from the employer in this appeal, and in each of those weeks earned an amount equivalent to or in excess of his weekly benefit amount, he may not be disqualified under G.L. c. 151A, § 25(e).

**Board of Review
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Issue ID: 0041 0133 13

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 July 15, 2019. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse on different grounds.

The claimant filed an initial claim for unemployment benefits on May 3, 2020. On May 21, 2020, the agency initially determined that the claimant was entitled to benefits. The employer appealed and only the employer attended the hearing. In a decision rendered on September 15, 2020, the review examiner reversed the agency determination, concluding that the claimant voluntarily left employment without good cause attributable to the employer or urgent, compelling, and necessitous reasons and, thus, was disqualified under G.L. c. 151A, § 25(e)(1). The Board accepted the claimant's application for review.

Findings of Fact

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

1. The claimant worked part-time as a Dining Room Server for the employer, a retirement community, from August 19, 2016 until becoming separated from employment on July 15, 2019.
2. The claimant was working for the employer 16 hours per week. His final pay rate with the employer was \$15.45 per hour.
3. On July 1, 2019, the claimant provided his verbal resignation to the Food and Beverage Director. The claimant informed her that he was providing his resignation as he had obtained a new job. The claimant informed the Food and Beverage Director that he would be working full-time on the day shift, being

paid \$17 per hour. The claimant informed the employer that his last day at work for the employer would be July 15, 2019.

4. The claimant was not required by the employer to place his resignation in writing.
5. The claimant worked his regular hours of work with the instant employer up until the July 15, 2019 date. The claimant did not perform any services for the employer after July 15, 2019.
6. The employer continued to have the claimant's regular hours of work available to him after the July 15, 2019, if he had not resigned.
7. The claimant filed his claim for unemployment benefits on May 19, 2020. The effective date of the claim is May 3, 2020.

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. However, because of the factual and legal circumstances before us, we need not decide whether the review examiner's decision is free from any error of law.

As noted above, the review examiner disqualified the claimant under G.L. c. 151A, § 25(e), which provides in relevant part as follows:

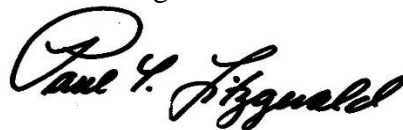
[No waiting period shall be allowed and no benefits shall be paid to an individual under this chapter] . . . (e) For the period of unemployment next ensuing and **until the individual has had at least eight weeks of work and in each of said weeks has earned an amount equivalent to or in excess of the individual's weekly benefit amount 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 for such an urgent, compelling and necessitous nature as to make his separation involuntary. (Emphasis added.)

G.L. c. 151A, § 25(e), expressly provides that the circumstances surrounding a claimant's separation from an employer will not impact his or her eligibility for benefits if he or she has completed at least eight weeks of work for a new employer after separating from the previous employer. In this case, the review examiner found that the claimant separated from the instant employer on July 15, 2019, but did not file his claim until May 3, 2020. Findings of Fact ## 5 and 7. A review of the claimant's UI Online record shows that the claimant performed services for another employer for more than eight weeks during the period between July 15, 2020, and May 3,

2020. During this subsequent employment period, the claimant's earning were in excess of his weekly benefit amount. Thus, the claimant satisfied the provisions of G.L. c. 151A, § 25(e), regarding subsequent employment after his separation from the instant employer.

We, therefore, conclude as a matter of law that the circumstances of the claimant's separation from the instant employer do not impact his eligibility for benefits under his May 3, 2020 claim.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning May 3, 2020, and for subsequent weeks if otherwise eligible.



BOSTON, MASSACHUSETTS

DATE OF DECISION - October 23, 2020

Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

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

If this decision disqualifies the claimant from receiving regular unemployment benefits, the claimant may be eligible to apply for Pandemic Unemployment Benefits (PUA). The claimant may contact the PUA call center at (877) 626-6800 and ask to speak to a Tier 2 PUA Supervisor.

**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.

LSW/rh