

**Board of Review
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Issue ID: 0047 7433 22

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 her separation from employment on June 22, 2020. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm in part and reverse in part.

On July 9, 2020, the agency initially determined that the claimant was not entitled to unemployment benefits as of the week ending May 9, 2020. The claimant appealed, and both parties attended the hearing. In a decision rendered on June 23, 2022, the review examiner affirmed the agency determination, concluding that, because the claimant failed to make reasonable efforts to preserve her employment before quitting, she failed to establish that she involuntarily left employment for 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.

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 conclusion that the claimant's separation from employment is disqualifying is based on substantial evidence and is free from any error of law affecting substantive rights. However, we disagree with the review examiner's decision to subject the claimant to a full disqualification from the receipt of benefits.

Information contained in the DUA's electronic record-keeping system, UI Online, shows that the claimant's work for the instant employer was part-time subsidiary employment during the base period of her 2020 claim, which has an effective date of April 5, 2020. We further note that the claimant's eligibility for benefits is based on her non-disqualifying separation from her primary employer on March 31, 2020.

Because the instant employer was a part-time subsidiary employer during the base period of the claim, and the claimant has been approved for benefits based on her prior separation from her primary employer, the disqualifying separation here does not render the claimant ineligible for her entire weekly benefit amount. The claimant is subject to a constructive deduction, rather than a complete denial of benefits pursuant to 430 CMR 4.76(1)(a)(2).

The claimant's constructive deduction shall be calculated pursuant to 430 CMR 4.78(1)(b), which provides as follows:

On any separation from subsidiary part-time work after the establishment of a claim, the gross wages paid shall be divided by the number of weeks worked for the subsidiary part-time employer after the filing of a claim to determine the average part-time earnings.

UI Online further shows that the claimant reported earning gross wages of \$98.77 during the week ending April 18, 2020; \$74.49 during the week ending April 25, 2020; \$69.81 during the week ending May 2, 2020; and \$86.21 during the week ending May 9, 2020 — the last week for which she performed services for the instant employer.

Applying the calculation method set forth in 430 CMR 4.78(1)(b), the claimant's average weekly wage after she established her claim was \$82.32. Accordingly, \$82.32, minus the earnings disregard, shall be deducted from the claimant's weekly benefit amount. Since the claimant's earnings disregard is \$135.33, the constructive deduction shall be in the amount of \$0.00.

We, therefore, affirm the part of the review examiner's decision which concluded that the claimant's separation from the instant employer during the week ending May 9, 2020, was disqualifying. However, we reverse the portion of the decision which subjected the claimant to a full disqualification from the receipt of benefits. The claimant is only subject to a constructive deduction in the amount of \$0.00, which does not modify her weekly benefit amount.



Charlene A. Stawicki, Esq.
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION - July 29, 2022



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
(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.

JPCA/rh