

DUA's Notice of Determination denying the claimant benefits under G.L. c. 151A, § 25(e) was issued more than one year after her first payment of benefits. As there is no evidence of misrepresentation, the disqualification is time-barred pursuant to G.L. c. 151A, § 71.

**Board of Review
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Issue ID: 0055 8636 76

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 separated from her position with the employer on August 16, 2019. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on June 23, 2021. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the claimant, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on September 1, 2022. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment without good cause attributable to the employer or for urgent, compelling, and necessitous reasons and, thus, was disqualified under G.L. c. 151A, § 25(e)(1). Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal as well as the DUA's electronic record-keeping system (UI Online).

The issue before the Board is whether the review examiner's decision, which concluded that the claimant was subject to a disqualification of benefits because she voluntarily left her part-time job to attend graduate school, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant was employed as a part-time banquet server for the employer from April 1, 2019, until her separation on August 16, 2019.
2. The employer is a beach club and banquet facility.

3. On or about August 1, 2019, the claimant informed her employer that her last day of work would be August 16, 2019.
4. The claimant had no issues or concerns with her employer regarding her employment.
5. The claimant quit her employment on August 16, 2019, to begin graduate school at an out-of-state location.

Ruling of the Board

In accordance with our statutory obligation, we review the record and 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 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, as discussed more fully below, we need not consider whether the review examiner's decision was correct because the DUA's underlying determination was improperly issued under 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 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

Upon the filing of a claim, the Massachusetts unemployment statute requires that the DUA determine whether or not the claim is valid, including that the claimant separated for qualifying reasons.¹ In this case, the claimant was initially awarded benefits following her separation from employment. The DUA's electronic database, UI Online, shows that the DUA issued its first payment to the claimant on May 14, 2020. By issuing that payment, the DUA is deemed to have determined the claimant's separation from the employer was qualifying under G.L. c. 151A, § 25(e).

This means that the DUA's June 23, 2021, determination was actually a redetermination. Pursuant to the time limitations set forth under G.L. c. 151A, § 71, the DUA may not issue a redetermination on a claim more than one year from the date of the original determination unless there is misrepresentation of fact. Since there is nothing in the record or in UI Online indicating that those benefits were paid based upon a misrepresentation of fact, the DUA had one year within which it

¹ G.L. c. 151A, §§ 25(e) and 39(a).

could redetermine the claimant's eligibility for benefits. Here, the DUA's determination was issued more than one year later. Thus, the agency exceeded its authority pursuant to G.L. c. 151A, § 71.

We, therefore, conclude as a matter of law that the DUA's June 23, 2021, Notice of Determination was time-barred under G.L. c. 151A, § 71.

The review examiner's decision is reversed. The claimant is entitled to benefits as of the week beginning August 11, 2019, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 27, 2023



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
(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.

DY/rh