

**Board of Review
100 Cambridge Street, Suite 400
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member
Michael J. Albano
Member**

Issue ID: 0058 3305 74

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 part-time employment on June 12, 2020. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm in part and reverse in part.

The claimant had filed a claim for benefits, effective April 5, 2020, and was initially approved. Following this separation from employment, the DUA disqualified the claimant beginning June 14, 2020, and imposed a constructive deduction to her weekly benefit amount in a determination issued on March 17, 2021. The claimant appealed, and both parties attended the hearing. In a decision rendered on September 13, 2022, the review examiner modified 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). However, the review examiner concluded that the claimant was subject to a full disqualification from the receipt of benefits. 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 decision 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, we disagree with the review examiner's decision to subject the claimant to a full disqualification from the receipt of benefits.

When a claimant separates from a part-time employer during her benefit year for disqualifying reasons under G.L. c. 151A, § 25(e), she may not be rendered ineligible for her entire weekly benefit amount but may merely be subject to a constructive deduction. 430 CMR 4.76(1)(a)(2) and 430 CMR 4.78(1)(c).

We note that the DUA's electronic record-keeping system, UI Online, shows that the claimant filed for unemployment benefits effective April 5, 2020. Because the claimant separated from the instant part-time employer on June 12, 2020, this separation occurred during her benefit year. Pursuant to 430 CMR 4.76(1)(a)(2), the claimant is subject to a constructive deduction and not a full disqualification from receipt of benefits.

We affirm the part of the review examiner's decision which concluded that the claimant's separation from the instant employer was disqualifying. 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, reducing her weekly benefit amount to \$206.18, beginning week ending June 20, 2020, and for subsequent weeks, until she has earned an amount equivalent to or in excess of eight times her weekly benefit amount or the claimant either returns to her former part-time job or obtains new part-time work.



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 25, 2023

Member Charlene A. Stawicki, 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