

**Board of Review
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**Paul T. Fitzgerald, Esq.
Chairman
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Member
Michael J. Albano
Member**

Issue ID: 0058 8478 58

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 November 6, 2020. We review pursuant to our authority under G.L. c. 151A, § 41. While we affirm the decision to deny benefits, we modify the period of the claimant's disqualification.

On March 16, 2021, 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 December 21, 2021, the review examiner affirmed the agency determination, concluding that the claimant engaged in deliberate misconduct in willful disregard of the employer's interest and, thus, was disqualified under G.L. c. 151A, § 25(e)(2). 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 is based on substantial evidence and is free from any error of law affecting substantive rights.

While we agree that the decision to deny benefits was supported by substantial and credible evidence, we believe that the review examiner erred by disqualifying the claimant as of October 17, 2020.

The record shows that the claimant was placed on a disciplinary suspension prior to being discharged from employment, and that the employer discharged her on November 6, 2020. Because the issue before us only concerns her separation from employment, we are implementing a start date of November 6, 2020, to the claimant's disqualification in this matter. In addition, we are requesting that the DUA investigate the claimant's eligibility during her suspension, which took place between October 19, 2020, and November 5, 2020, pursuant to G.L. c. 151A, § 25(f).

The review examiner's decision is, therefore, affirmed in part and reversed in part. The claimant is disqualified from receiving unemployment benefits beginning November 6, 2020, and for subsequent weeks, until such time as she has had at least eight weeks of work and has earned an amount equivalent to or in excess of eight times her weekly benefit amount.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - February 24, 2022



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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.

JMO/rh