

**Board of Review  
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Chairman  
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Member  
Michael J. Albano  
Member**

**Issue ID: 0058 8665 66**

### Introduction and Procedural History of this Appeal

The employer appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to award the claimant benefits following his separation from employment. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On March 13, 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 July 22, 2021, the review examiner reversed the agency determination, concluding that the claimant involuntarily left employment for urgent, compelling, and necessitous reasons and, thus, was not disqualified under G.L. c. 151A, § 25(e)(1). The Board accepted the employer'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 employer's appeal, we conclude that the review examiner's ultimate decision to award unemployment benefits is based on substantial evidence and is free from any error of law affecting substantive rights. However, we affirm on different grounds.

As stated in the review examiner's decision, after the claimant was laid off from the employer on March 25, 2020, due to COVID-19, he began a new, permanent full-time job, and for this reason, declined to return when recalled by the employer. G.L. c. 151A, § 25(e), provides, in relevant part:

[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 . . . 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. . . .

No disqualification shall be imposed if such individual establishes to the satisfaction of the commissioner that he left his employment in good faith to accept

new employment on a permanent full-time basis, and that he became separated from such new employment for good cause attributable to the new employing unit.

We take administrative notice of the records in the DUA's electronic record-keeping system, UI Online, which show that the claimant separated from this new employer on May 10, 2020, and that the DUA determined that the separation was for good cause attributable to the new employer. *See* Issue ID: 0057 8063 38.

Thus, we conclude as a matter of law that the claimant is entitled to benefits under G.L. c. 151A, § 25(e), not because he separated due to urgent, compelling, and necessitous reasons, but because he started working for a new employer, and the new employment ended for good cause attributable to the new employer.

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

**N.B.** — If the employer has any questions about potential charges in connection with the claimant's unemployment claim, it may contact the DUA Employer Charge Unit.



Paul T. Fitzgerald, Esq.  
Chairman

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - September 30, 2021**



Charlene A. Stawicki, Esq.  
Member

Member Michael J. Albano 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 apply at: <https://ui-cares-act.mass.gov/PUA/>. The claimant may also call customer assistance at 877-626-6800 (select the number for your preferred language, then press # 2 for PUA).

**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](http://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.

AB/rh