

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

**Issue ID: 0058 9369 26**

### 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 her separation from employment on August 12, 2020. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm on other grounds.

On March 13, 2021, the agency initially determined that the claimant was entitled to unemployment benefits. The employer appealed and attended the hearing. In a decision rendered on November 15, 2022, the review examiner affirmed 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 decision is based on substantial evidence and is free from any error of law affecting substantive rights.

However, we note that, while the review examiner reaches the appropriate decision, she did so by applying an erroneous provision of law. The review examiner applied G.L. c. 151A, § 25(e)(1), and concluded that the claimant established urgent, compelling, and necessitous reasons because she left employment to begin a new, full-time, permanent position with a new employer. The review examiner's application of G.L. c. 151A, § 25(e)(1), to the facts of this case constitutes a legal error, because there is nothing in the record to support this conclusion.

Instead, we believe that a different provision within G.L. c. 151A, § 25(e), applies to the circumstances of this case, which states, in pertinent part, as follows: "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." Here, the record contains evidence, including the employer's own testimony, that the claimant left her position to begin working a new full-time, permanent position with a new employer, and that she began working for the new employer immediately after she resigned the with the instant employer. Because there is no indication in the record or the agency's UI Online record-keeping database that the claimant separated from the subsequent employer for a disqualifying reason, the review examiner's decision to award benefits is appropriate. As a result,

the review examiner's misapplication of law does not adversely affect the parties' substantive rights or otherwise necessitate a different outcome.

In addition, the UI Online record-keeping system indicates that the employer was relieved of benefit charges related to the claim on August 9, 2020, and has not been charged for the claimant's benefits at any time. Beginning in August, 2020, the claimant's benefit payments have been issued through the DUA's solvency account, in accordance with G.L. c. 151A, § 14(d)(3).

The review examiner's decision is affirmed. The claimant is entitled to receive benefits for the week beginning August 9, 2020<sup>1</sup>, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - December 8, 2022**



Paul T. Fitzgerald, Esq.  
Chairman



Michael J. Albano  
Member

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](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.

JMO/rh

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<sup>1</sup> In her decision, the review examiner concluded that the claimant was entitled to benefits "beginning August 12, 2020." Here, we refer to the appropriate week beginning date, which is consistent with the agency's practice.