

**Although the claimant's separation from the employer was disqualifying under G.L. c. 151A, § 25(e), the claimant is still eligible for benefits under a claim filed after separating from a subsequent employer. Since the claimant had at least 8 weeks of work with another employer prior to filing his claim, the present employer was not an interested party.**

**Board of Review  
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Member  
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**Issue ID: 0058 9637 64**

### 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 we affirm in part, and reverse in part.

The claimant separated from his position with the employer on June 2, 2020. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on January 25, 2021. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by both parties, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on May 18, 2021. 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 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.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant voluntarily separated from the employer without good cause attributable to the employer and without urgent, compelling, and necessitous reasons, 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 the owner of the instant employer's establishment. The instant employer's establishment was a drilling company. The instant employer's establishment was incorporated. The claimant formed the instant employer's establishment in 2008.

2. The claimant was the only worker at the instant employer's establishment. The claimant worked as a driller for the instant employer's establishment.
3. The claimant was paid as a w-2 worker working for the instant employer's establishment. The claimant was paid a gross weekly pay of approximately \$2,000 while working for the instant employer.
4. The claimant worked about 60 hours per week for the instant employer's establishment.
5. In 2017, the instant employer's establishment made a profit of \$82,222.
6. In 2018, the instant employer's establishment made a profit of \$119,109.
7. In 2019, the instant employer's establishment made a profit of \$68,823.
8. The claimant needed a new drill to continue to operate his business. A new drill costs over half a million dollars. A used drill costs approximately \$170,000-\$220,000. It was difficult for the claimant to make a profit and make payments on a new or used drill.
9. The claimant was struggling working for the instant employer's establishment working as a fulltime driller due to the claimant's age of 65 years old.
10. The claimant left work with the instant employer's establishment because the claimant decided to close the instant employer's establishment, his business, due to needing a new drill and being 65 years of age.
11. The claimant's last date of performing any work for the instant employer was on June 2, 2020. This was the claimant's last date of work for the instant employer's establishment due to the claimant deciding to close the instant employer's establishment.
12. On June 14, 2020, the claimant started working fulltime for another employer (hereinafter 2<sup>nd</sup> employer) as a driller. The claimant works 40 hours per week for the 2<sup>nd</sup> employer. The drilling position with the 2<sup>nd</sup> employer was much easier job than the claimant's position at the instant employer's establishment.
13. On October 24, 2020, the claimant officially dissolved the instant employer's establishment.
14. The employer's establishment continued to make a profit until the business was dissolved.
15. On November 20, 2020, the 2<sup>nd</sup> employer temporarily discharged the claimant from work due to a lack of work.

16. The claimant filed an initial unemployment claim effective the week beginning November 22, 2020.
17. On January 5, 2021, the Department of Unemployment Assistance issued a Notice of Disqualification denying the claimant benefits under Section 25(e)(1) of the Law commencing the week beginning November 11, 2020 and until he met the requalifying provisions of the Law. The claimant appealed the Notice of Disqualification.
18. On March 10, 2021, the claimant returned to fulltime work for the 2nd employer.

### 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 original 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. The review examiner correctly concluded that the claimant voluntarily separated from the employer without good cause attributable to the employer and without urgent, compelling, and necessitous reasons under G.L. c. 151A, §25(e)(1). However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant is ineligible to receive benefits on this claim.

Under G.L. c. 151A, § 38(b), the DUA must give notice of a claim to the claimant's most recent employing unit and to such other employers as the DUA shall prescribe. The DUA has prescribed that interested party employers include those employers from whom the claimant became separated during the last eight weeks of employment prior to the effective date of his benefit year claim. Pursuant to this policy, a claimant's eligibility under G.L. c. 151A, § 25(e), will only be based upon his separation from interested party employers.

This policy is consistent with the eight-week disqualification period, which the Legislature embedded into G.L. c. 151A, § 25, which states:

[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 and until the individual has had at least eight weeks of work . . . 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, (2) by discharge shown to the satisfaction of the commissioner by substantial and credible evidence to be attributable to . . . a knowing violation of a reasonable and uniformly enforced rule or policy of the employer, provided that such violation is not shown to be as a result of the employee's incompetence . . . .

(Emphasis added.) Thus, an individual, who separates from a prior employer and immediately files an unemployment claim, may be disqualified under G.L. c. 151A, § 25(e)(1) or (2), depending upon the circumstances of that separation. However, what transpired with this former employer

cannot be disqualifying, if that individual subsequently performs eight weeks of work for another employer and then files a claim. The DUA has no interest in the prior employer's separation, because it has no bearing on whether the claimant is entitled to benefits under § 25.

Here, the claimant's UI Online profile indicates that the claimant filed his present unemployment claim with the DUA on November 24, 2020, with an effective date of November 22, 2020. As reflected in the findings of fact, this claim was filed almost 25 weeks after the claimant's separation from the instant employer on June 2, 2020. Additionally, the record shows that the claimant worked for a new employer from June 16, 2020, until his separation on November 20, 2020.<sup>1</sup> Since the claimant did not become separated from the instant employer during the last eight weeks of employment prior to opening his claim, the employer is not an interested party employer.

We, therefore, conclude as a matter of law that the claimant may not be disqualified from receiving benefits under this claim based upon his separation from the employer on June 2, 2020.

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<sup>1</sup> We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. *See* Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

The portion of the review examiner's decision, which concluded that the claimant's separation from the employer was disqualifying, pursuant to G.L. c. 151A, § 25(e)(1), is affirmed. The portion of the review examiner's decision, which concluded that the claimant is ineligible to receive benefits is reversed. The claimant is entitled to receive benefits for the week beginning November 22, 2020, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.  
Chairman



Michael J. Albano  
Member

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - September 27, 2021**

Member Charlene A. Stawicki, Esq. 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.

LSW/rh