

Although the claimant's resignation was disqualifying under G.L. c. 151A, § 25(e)(1), it does not render him ineligible for benefits, because after he separated from this employer, he had more than eight weeks of work. DUA does not treat the employer as an interested party.

**Board of Review
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Issue ID: 0063 1166 60

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 January 22, 2021. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on June 5, 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 August 19, 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 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 was not eligible for benefits because he did not articulate a reasonable belief that his discharge was imminent at the time he resigned, 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. On December 21, 2021, the claimant began working full-time as a machinist for the employer, a machine shop.
2. Beginning in January of 2021, the claimant's struggled in his job performance.
3. The claimant believed he would be discharged if he continued struggling.

4. The employer did not give any indication to the claimant that he was going to be discharged based on his performance.
5. The employer did not warn the claimant about his performance.
6. On January 22, 2021 the claimant resigned from his position.
7. On June 5, 2021, the Department of Unemployment Assistance (DUA) issued the claimant a Notice of Disqualification effective January 24, 2021 stating he was not eligible for benefits.
8. The claimant appealed the determination.

Ruling of the Board

In accordance with our statutory obligation, we review 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 ultimate conclusion is free from error of law. After such review, the Board adopts the review examiner's findings of fact except as follows. There appears to be a typographical error in Finding of Fact # 1, which states that the claimant began working for the employer on December 21, 2021. As the claimant separated from this employer in January, 2021, we believe the review examiner intended to find that the claimant began working for the employer on December 21, 2020. In adopting the remaining findings, we deem 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.

The claimant's UI Online profile indicates that the claimant filed his present unemployment claim (2021-01) with the DUA on June 1, 2021, with an effective date of May 30, 2021. As reflected in the findings of fact, this claim was opened more than 18 weeks after the claimant's separation from the instant employer on January 22, 2021. Additionally, the record shows that the claimant worked for a new employer from February 8, 2021, until his separation on May 28, 2021.¹ Since the claimant did not become separated from the instant employer during the last eight weeks of employment prior to opening his 2021-01 claim, the employer is not an interested party employer.

We, therefore, conclude as a matter of law that the claimant may not be denied benefits under his 2021-01 claim based upon his separation from the instant employer on January 22, 2021.

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 May 30, 2021, and for subsequent weeks if otherwise eligible.

¹ 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).

N.B.: The record indicates that the claimant separated from an interested party employer on May 28, 2021. For this reason, we are asking the agency to investigate the claimant's eligibility for benefits based on this separation under the provisions of G.L. c. 151A, § 25(e).



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 30, 2021



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

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