

Claimant taxi driver voluntarily quit her job when she was unable to renew her taxi license due to a suspended driver's license from an outstanding unpaid traffic ticket. The Board disqualified the claimant under G.L. c. 151A, § 25(e)(1). However, because the claimant separated from this part-time job during the benefit year, she is only subject to a constructive deduction pursuant to 430 CMR 4.76(1)(a)(2), not a total disqualification from receiving benefits.

**Board of Review
100 Cambridge Street, Suite 400
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member
Michael J. Albano
Member**

Issue ID: 0066 2262 92

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 filed a claim for unemployment benefits with the DUA, effective March 15, 2020, which was approved. Subsequently, the claimant separated from her part-time position with the instant employer on December 30, 2020, and reopened a previously filed unemployment claim on January 17, 2021. In a determination issued on January 13, 2022, DUA denied benefits. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the claimant, the review examiner modified the agency's initial determination and denied benefits in a decision rendered on January 24, 2023. 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, as well as the DUA's electronic record-keeping system, UI Online.

The issue before the Board is whether the review examiner's decision, which concluded that that the claimant was disqualified from receiving benefits under G.L. c. 151A, § 25(e)(1), because she voluntarily left her employment when she lost her taxi license, 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 worked as a driver for the employer, a taxi company, from 7/1/20 until 12/30/20, when she became separated.

2. The claimant was hired to work part time 20 to 25 hours [sic], earning \$13.50 an hour.
3. The claimant became separated as a result of losing her taxi license.
4. In October or November of 2020, the owner gave the claimant notice that she needed to reapply for her taxi license. The owner had given the claimant paperwork to complete so he could take the documentation and go before [sic] City Council before 12/31/20.
5. On 12/29/20, the claimant's request to renew her taxi license was not granted. The claimant was informed, on the next day she worked, by the owner that her request for renewal had been denied.
6. The claimant left her employment with the instant employer as of 12/30/20, when she failed to renew her taxi license.
7. The claimant had been informed further that the denial was because her driver's license was suspended due to a 2018 traffic ticket that was issued by the state of New York.
8. The claimant subsequently reached out to the state of New York and paid the ticket in January of 2021.
9. The claimant never reapplied for the renewal of her taxi license. She had decided she was not going to return to work with the instant employer and instead focus on working at her full-time employment.
10. Prior to her separation, the claimant had not received any disciplinary action. She never requested a leave of absence, nor did she ask the employer for other work before she quit.

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 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. However, as discussed more fully below, while we agree with the review examiner's conclusion that the claimant's separation from the employer is disqualifying, she is subject only to a constructive deduction rather than a complete disqualification of all benefits.

Because the claimant voluntarily left her employment, her qualification for benefits is governed by G.L. c. 151A, § 25(e)(1), provides, in pertinent part, as follows:

[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.

Under the express language of these statutory provisions, the claimant bears the burden of proof to show that she is eligible to receive unemployment benefits.

Here, the claimant left her employment when she learned that she was unable to renew her taxi license because her Massachusetts driver's license was suspended. It had been suspended because of an unpaid traffic ticket. *See* Finding of Facts ## 6, 7 and 9.

A claimant who is unable to work because of a license suspension leaves her employment voluntarily, and she is not eligible for unemployment benefits. Olmeda v. Dir. of Division of Employment Security, 394 Mass. 1002 (1985) (rescript opinion) (the Court upheld the denial of unemployment benefits to a claimant who was unable to work, because his driver's license was suspended for a year following a conviction for driving while intoxicated). *See also* White v. Dir. of Division of Unemployment Assistance, No. 12-P-1660, 2013 WL 3778973 (Mass. App. Ct. July 22, 2013), *summary decision pursuant to Rule 1:28* (claimant, who permitted his CDL to become invalid, created his own disqualification and voluntarily made himself ineligible for employment).

Nothing in the record suggests that the claimant left her job due to the employer's actions or due to any urgent, compelling, and necessitous circumstances. The claimant left her job because of an unpaid parking ticket. As she created the legal impediment which barred her from performing the primary duties of her job, she is not eligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

However, because the claimant separated from the part-time employer during her benefit year, we must consider whether a constructive deduction, rather a full disqualification of benefits, should apply. The DUA regulation at 430 CMR 4.76 provides, in relevant part, the following:

(1) A constructive deduction, as calculated under 430 CMR 4.78, from the otherwise payable weekly benefit amount, rather than complete disqualification from receiving unemployment insurance benefits, will be imposed on a claimant who separates from part-time work for any disqualifying reason under M.G.L. c. 151A, § 25(e), in any of the following circumstances:

(a) if the separation is:

1. from subsidiary, part-time work during the base period and, at the time of the separation, the claimant knew or had reason to know of an impending separation from the claimant's primary or principal work; or

2. if the separation from part-time work occurs during the benefit year. . . .

UI Online shows that the claimant's benefit year ran from March 15, 2020, through March 13, 2021. She separated from her part-time job with the employer on December 30, 2020, within her benefit year. *See* Finding of Fact # 6. Because she separated from this part-time work during the benefit year, she is subject to a constructive deduction under 430 CMR 4.76(1)(a)(2).

A constructive deduction is defined as "the amount of remuneration that would have been deducted from the claimant's weekly benefit amount . . . if the claimant had continued to be employed on a part-time basis." 430 CMR 4.73.

The amount of the constructive deduction each week is determined by the claimant's earnings from the part-time employer. 430 CMR 4.78(1)(c) calculates the average part-time earning as follows:

On any separation from part-time work which is obtained after the establishment of a benefit year claim, the average part-time earnings will be computed by dividing the gross wages paid by the number of weeks worked.

Pursuant to 430 CMR 4.78(2), to calculate the amount of the constructive deduction, the earnings disregard is applied to the average part-time earnings as calculated under 430 CMR 4.78(1)(c).

UI Online shows that during the benefit year, the claimant's total gross wages for the employer were \$6,457.03, and she worked for approximately 27 weeks. Thus, her average weekly wage was \$239.15. UI Online further shows that the claimant's weekly benefit amount was \$449.00, and her earnings disregard was \$149.67. Given that her average weekly wage is greater than her earnings disregard, the constructive deduction is the difference. Therefore, the claimant is subject to a constructive deduction in the amount of \$89.48 to be applied to her weekly benefit amount.

We, therefore, conclude as a matter of law that because the claimant resigned from her employment without good cause attributable to the employer or urgent, compelling, and necessitous reasons, she is disqualified from receiving benefits under G.L. c. 151A, § 25(e)(1). We further conclude that the claimant's weekly benefits are subject only to a constructive deduction pursuant to 430 CMR 4.76.

The review examiner's decision is affirmed in part and reversed in part. If otherwise eligible, the claimant is entitled to receive benefits subject to a constructive deduction in the amount of \$89.48 from her weekly benefit amount, beginning January 3, 2021, and for subsequent weeks, until she has earned an amount equivalent to or in excess of eight times her weekly benefit amount, or the claimant either returns to her former part-time job or obtains new part-time work.

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 15, 2023



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, 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.

DY/rh