

**Board of Review
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Issue ID: 0068 0978 62

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 benefits following the claimant's separation from employment on April 7, 2020. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On May 21, 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 29, 2021, the review examiner affirmed the agency determination, concluding 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).

The review examiner also concluded that, because the claimant separated from a part-time job that commenced during her benefit year, the claimant is subject to a constructive deduction and wrote in pertinent part: "In this case, the claimant worked 20 hours per week at \$14 per hour, for a total of \$280. Therefore, the claimant is subject to a constructive deduction of \$280 per week. DUA determined the claimant's benefit rate to be \$301 per week. Because a constructive deduction treats the claimant as if she were still employed, with a weekly benefit rate of \$301 and a constructive deduction of \$280 (minus an earnings disregard of \$100.33 per week), the claimant will be paid benefits of \$121 per week, if otherwise eligible." The Board accepted the claimant's application for review.

Ruling of the Board

After considering the recorded testimony and the evidence from the hearing, the review examiner's decision, and the claimant'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. We also agree with the review examiner's decision to subject the claimant to a partial disqualification from the receipt of benefits. We take administrative notice of the information in the DUA UI Online electronic record-keeping system, which shows that the claimant filed a claim for unemployment benefits effective January 5, 2020. Because the claimant began working for the instant part-time employer on March 26, 2020, this employment constitutes benefit year employment.

The review examiner correctly noted that, when a claimant separates from a part-time employer during her benefit year for disqualifying reasons, she is not rendered ineligible for her entire weekly benefit amount. Rather, she is merely subject to a constructive deduction from her weekly

benefit rate. 430 CMR 4.76(1)(a)(2) and 430 CMR 4.78(1)(c). However, DUA Regulation 430 CMR 4.78(1)(c) also provides that, “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.” Thus, the review examiner erred when she multiplied the claimant’s weekly scheduled number of hours and her hourly wage to arrive at the claimant’s constructive deduction amount, instead of utilizing the claimant’s average part-time earnings.

Based on the earnings information in the DUA UI Online system and the dates of employment in the findings, the claimant’s reported gross earnings totaled \$770.81, which, when divided by 2, the number of weeks the claimant worked, results in average weekly part-time earnings of \$385.46. Accordingly, \$385.46, minus the earnings disregard, shall be deducted from the claimant’s weekly benefit amount. Since the claimant’s earnings disregard is \$100.33, the constructive deduction shall be in the amount of \$285.13.

We, therefore, affirm the review examiner's decision which concluded that the claimant's separation from the instant employer during the week beginning April 5, 2020, was disqualifying and that the claimant was subject to a partial disqualification from the receipt of benefits. However, we also modify that portion of the decision where the review examiner calculated the claimant's constructive deduction amount to reflect the correct constructive deduction in the amount of \$285.13.

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 29, 2021



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, 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

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